

LEGISLATIVE BILL 962

Passed over the Governor's veto April 9, 1984

Introduced by Revenue Committee, Carsten, 2,
Chairperson; Pappas, 42; V. Johnson, 8;
Hefner, 19; Lundy, 36; Hannibal, 4;
Landis, 46; Sieck, 24

AN ACT relating to revenue and taxation; to amend sections 77-2103 to 77-2105, 77-2706.01, 77-2719, 77-2725, 77-2753, 77-2754 to 77-2758, 77-2770, 77-2785, 77-2788, 77-2790, 77-2791, 77-27,104, 77-27,119, 77-27,125, 77-27,130, and 81-1247, Reissue Revised Statutes of Nebraska, 1943, sections 77-2102, 77-2705, 77-2706, and 77-2711, Revised Statutes Supplement, 1982, and sections 77-2702, 77-2715.04, 77-2715.06, 77-2716, and 77-2769, Revised Statutes Supplement, 1983; to change provisions relating to taxes and revenue as prescribed; to change provisions relating to estate taxes; to define and redefine terms; to change provisions relating to sales and use taxes; to change provisions relating to tax collection; to change provisions relating to income taxes as prescribed; to change provisions relating to the Cash Reserve Fund; to change provisions relating to withholdings; to change provisions relating to certain assessments; to change provisions relating to franchise taxes as prescribed; to provide powers and duties; to eliminate certain provisions relating to taxation of estates and trusts; to provide penalties; to provide operative dates; and to repeal the original sections, and also sections 77-2720, 77-2722, and 77-2726, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. The personal representative of every estate subject to the tax imposed by Chapter 77, article 21, who is required by the laws of the United States to file a federal estate tax return, shall file with the Tax Commissioner within twelve months from the date of death of the decedent:

(1) An estate tax return on forms prescribed by the Tax Commissioner for taxes due under Chapter 77, article 21;

(2) A true copy of the federal estate tax return, pages 1, 2, and 3;

(3) A true copy of the federal determination of estate tax whether issued by the Internal Revenue Service or a federal court. If such determination has not been received from the Internal Revenue Service or the federal court at the time of filing the return required in subdivision (1) of this section, a statement that the determination is unavailable shall be attached to the return and a true copy of the federal determination shall be filed with the Tax Commissioner within ten days of receipt of such determination by the personal representative; and

(4) A true copy of the inheritance tax return or worksheet as filed with the county court in each county where the decedent had property.

Sec. 2. (1) Within thirty days after an estate tax return or the federal determination is filed pursuant to section 1 of this act, whichever is later, the Tax Commissioner shall examine it to determine the correct amount of tax.

(a) If the Tax Commissioner finds that the amount of tax on the return is less than the correct amount, he or she shall notify the personal representative of the decedent's estate of the amount of the deficiency proposed to be assessed. The pertinent provisions of section 77-2709 shall be applicable in the assessment of such proposed deficiencies.

(b) If the Tax Commissioner finds that the tax paid is more than the correct amount, he or she shall notify the personal representative of the amount and refund the difference to the personal representative.

(c) If the Tax Commissioner finds that the correct amount of estate tax has been paid or that no estate tax is due, he or she shall certify the same to the personal representative.

(2) If the personal representative fails to file an estate tax return as required under section 1 of this act, the Tax Commissioner or his or her legal representative may apply to the judge of the county court which has jurisdiction over the decedent's property for an order directing such personal representative to file the required return. If the personal representative fails to file or refuses to obey such order, he or she shall be guilty of contempt of court.

Sec. 3. (1) If the Tax Commissioner or any official or employee of the Tax Commissioner makes known in any manner the value of any estate or any particular set forth or disclosed in any report, state tax return, federal tax return, or other tax information required to be filed with the Tax Commissioner under the provisions of Nebraska's estate tax laws, except so far as may be necessary for the enforcement and collection of the estate tax provided for by the laws of this state, such person shall be guilty of a Class I misdemeanor.

(2) Federal tax returns, copies of such returns, and return information as defined under section 6103(d) of the Internal Revenue Code of 1954, as amended, and state estate tax returns and inheritance tax returns which are required to be filed with the Tax Commissioner for the enforcement of the inheritance and estate tax laws of this state shall be deemed to be confidential by the Tax Commissioner.

(3) Nothing in this section shall be construed to prohibit:

(a) The delivery or inspection of such returns or tax information by:

(i) The personal representative or legal representative of the decedent's estate;

(ii) The county attorney of the county in which the decedent's property is located;

(iii) The judge of the county court in which the decedent's property is located; or

(iv) The Attorney General's office or other legal representative of the Tax Commissioner when such returns or tax information are relevant to any action or proceeding instituted by or against the personal or legal representative of the decedent's estate;

(b) The furnishing of such information to the United States government or to other states allowing similar privileges to the Tax Commissioner; or

(c) The publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof.

Sec. 4. That section 77-2102, Revised Statutes Supplement, 1982, be amended to read as follows:

77-2102. The estate tax imposed under Chapter 77, article 21, by sections 77-2101, 77-2101-01, and 77-2102 to 77-2107 shall become due and payable to the State Treasurer of Nebraska within twelve months from the date of the death of the decedent. The limitation of time during which a tax return, for the purpose of this tax, shall be open to inspection and examination shall be three years from the date of filing the same. Personal representatives, trustees, grantees, donees, beneficiaries, surviving joint owners, and other recipients of property subject to tax, shall be and remain liable for the tax until it is paid. If the tax indicated by the return of the taxpayer is not paid when due, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be charged and collected from the date the same became payable. This tax shall be a lien on the real property subject thereto until the first to occur of: (1) Payment; (2) ten years from the date of death of the decedent; or (3) the release or discharge of any lien pursuant to section 77-2039, except that no interest in any property passing from the decedent to the decedent's

surviving spouse shall be subject to the lien.

Sec. 5. That section 77-2103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2103. If the amount of the estate tax imposed by the provisions of the Federal Revenue Act imposing tax on estates shall be increased or decreased as affecting an estate taxable hereunder, the tax imposed upon such estate under Chapter 77, article 21, ~~the provisions of section 77-2101 shall be changed accordingly. In no event shall the estate tax payable under Chapter 77, article 21, the provisions of sections 77-2101 to 77-2107 exceed the amount, if any, by which the maximum credit allowable to the estate against the United States estate tax exceeds the credits herein provided for in section 77-2101 Chapter 77, article 21.~~

Sec. 6. That section 77-2104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2104. The rules and regulations for determining the amount of net estate upon which the estate or excise tax imposed under Chapter 77, article 21, ~~by section 77-2101 shall be based, shall insofar as applicable, be the same rules and regulations adopted by the Commissioner of Internal Revenue for determining the net estate under the said Federal Revenue Act.~~

Sec. 7. That section 77-2105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2105. The Tax Commissioner shall have charge of the administration of ~~sections 77-2101 to 77-2107 Chapter 77, article 21, and sections 1 to 3 of this act and shall make such rules and regulations as may be necessary for the carrying to carry out of said sections Chapter 77, article 21. He or she shall have authority to require all persons or corporations liable for the payment of this estate or excise tax to file returns on such forms and at such times as he or she may require. The county judges of the state shall furnish the commissioner with such information as he or she may require from time to time with reference to estates pending in the county courts of Nebraska. Any person or corporation who shall fail to furnish the commissioner with such information or reports as he or she may require under Chapter 77, article 21, said sections shall be guilty of a Class V misdemeanor.~~

Sec. 8. That section 77-2702, Revised Statutes Supplement, 1983, be amended to read as follows:

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

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

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

(3) Contractor or ~~repairman~~ repairperson shall

mean any person who performs any repair services upon tangible personal property or who performs any improvement upon real estate, and who, as a necessary and incidental part of performing such services incorporates tangible personal property belonging to him or her into the property being so repaired or improved. Contractor or ~~repairman~~ **repairperson** shall be considered to be the consumer of such tangible personal property furnished by him or her and incorporated into the property being so repaired or improved, for all the purposes of sections 77-2701 to 77-27,135;

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

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

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

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

(iv) The amount of any excise or property tax levied against the tangible personal property, except as otherwise provided in sections 77-2701 to 77-27,135;

(b) Gross receipts of every person engaged as a public utility or as a community antenna television service operator shall mean:

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

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

(iii) In the furnishing of gas, electricity, sewer, and water service except water used for irrigation of agricultural lands, manufacturing purposes, and the care of animal life, the products of which ordinarily constitute food for human consumption, the gross income

received from the furnishing of such services upon billings or statements rendered to consumers for such utility services; and

(iv) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under the provisions of sections 18-2201 to 18-2205;

Gross receipts shall not mean gross income received from the provision, installation, construction, servicing, or removal of tangible personal property used in connection with the furnishing of any such public utility services or community antenna television service; or from telephone directory advertising;

(c) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property conveyed by tangible personal property consisting of film, tape, disk, or punched card; shall mean:

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

(ii) In the furnishing of videotapes and movie film, the gross income received from the license, franchise, or other method establishing the charge, except the gross income received from videotape and film rentals where the admission tax is charged under sections 77-2701 to 77-27,135; and

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

(i) Cash discounts allowed and taken on sales;

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

(iii) The amount charged for labor or services rendered in installing or applying the tangible personal property sold if such; ~~PROVIDED, that said~~ amount is separately stated; and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

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

contracts providing for deferred payments of the purchase price; ~~PROVIDED, that~~ if such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

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

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

(vii) Charges for transportation of tangible personal property after sale;

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

(ix) Receipts from conditional sale contracts, installment sale contracts, rentals, and leases executed in writing prior to June 1, 1967, and with delivery of the tangible personal property prior to June 1, 1967, are not subject to the tax imposed by sections 77-2701 to 77-27,135; ~~PROVIDED, if~~ such conditional sale contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration;

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

(6) Occasional sale shall mean:

(a) A sale of tangible personal property by a person who is not engaged in the business of selling such property, except motor vehicles as defined in section 60-301, and shall include, but not be limited to, a sale whereby a person liquidates his or her business in a single transaction or scraps or sells as salvage in a single transaction or series of transactions any such property previously productively used by such seller as a depreciable capital asset in his or her trade, business, utility, or agriculture for more than one year and such property was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller directly or indirectly has previously paid a sales or use tax thereon, or is the subject of any intercompany sale involving any parent, subsidiary, or brother-sister company relationship under subsection (5) of section 77-2704, and such property was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller directly or

indirectly has previously paid a sales or use tax thereon, except, PROVIDED, that occasional sale shall include the sale of motor vehicles, when the seller has previously paid the tax, as follows:

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

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

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

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

(v) From a partnership to the members thereof when made in kind in the dissolution of such partnership if the portion of the property so distributed to the members of the partnership is substantially in proportion to the interest in the partnership held by the members; and

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

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

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

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

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

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

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

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

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

(10) Retail sale or sale at retail shall mean:

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

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

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

receipts; and

(e) (d) The sale of admissions which shall mean the right or privilege to have access to or use a place or location, except admissions charged by (i) elementary or secondary schools, public or private, or (ii) school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school, public or private, during the regular school day or at an approved function of any such school;

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

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

(b)(i) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life shall be defined in part, but not limited to, live poultry or livestock on the hoof when sales are made by the grower, producer, feeder, or by any person engaged in the business of bartering, buying, or selling live poultry or livestock on the hoof;

(ii) Feed for any form of animal life or water which is supplied for consumption by animal life or which is otherwise used in caring for animal life of a kind the products of which ordinarily constitute food for human consumption or of a kind the pelts of which ordinarily are used for human apparel; feed shall mean and include, but is not limited to, all grains, minerals, salts, proteins, fats, fibers, vitamins, grit, and antibiotics commonly used as feed or feed supplements;

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

(iv) Agricultural chemicals to be applied to land or crops the products of which are to be used as food for human consumption or sold in the regular course of business;

(c) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by sections 77-2701 to 77-27,135; and returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. The term returnable containers means containers of a kind customarily returned by the buyer of the contents for reuse. All other

containers are nonreturnable containers;

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

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

(f) The purchase in this state or the purchase without this state, with title passing in this state, of materials and replacement parts, when used as, or when used directly in the repair and maintenance or manufacture of railroad rolling stock whether owned by a railroad or by any person whether a common or contract carrier or otherwise, motor vehicles, watercraft, or aircraft engaged as common or contract carriers of persons or property or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers of persons or property;

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

(h) Barges;

(12) Retailer shall mean:

(a)(i) Every seller engaged in the business of making sales of tangible personal property for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption;

(ii) Every person who leases or rents to another tangible personal property for storage, use, or other consumption, except film rentals where an admission tax is charged under sections 77-2701 to 77-27,135 and railroad rolling stock interchanged pursuant to the provisions of the Interstate Commerce Act;

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

(iv) Every person engaged as a public utility in

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

(b) When the Tax Commissioner determines that it is necessary for the efficient administration of sections 77-2701 to 77-27,135 to regard any salesperson, representatives, peddlers, canvassers, or auctioneers and persons conducting auction sales as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, auctioneers, or employers, the Tax Commissioner may, at his or her discretion, treat such agent as the vendor jointly responsible with his or her principal, distributor, supervisor, or employer for the purposes of sections 77-2701 to 77-27,135;

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

(a) The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;

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

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

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

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

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

(14) Sale for resale shall mean a sale of

tangible personal property to any purchaser who is purchasing such tangible personal property for the purpose of reselling it in the normal course of his or her business, either in the form or condition in which it is purchased, or as an attachment to, or integral part of, other tangible personal property. A sale for resale shall include a sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing such tangible personal property to another person, with rent or lease payments set at a fair market value, or film rentals for use in a place where an admission is charged that is subject to taxation under sections 77-2701 to 77-27,135, but not if incidental to the renting or leasing of real estate;

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

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

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

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

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

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

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

(i) Cash discounts allowed and taken on sales;

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

(iii) The amount charged for labor or services rendered in installing and applying the property sold; ~~PROVIDED, that~~ if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

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

(v) The value of tangible personal property

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

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

(vii) Charges for transportation of tangible personal property after sale;

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

(17) Storage shall include any retention in this state for any purposes except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer, other than tangible personal property which will enter into or become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale at retail. Neither storage nor use as defined in this subdivision shall include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state;

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

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

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

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

(a) Maintaining, occupying, or using,

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

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

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

(22) Packaged computer software shall mean all computer software other than custom computer software; and

(23) Custom computer software shall mean (a) software which is prepared to the special order of the customer, (b) prewritten software that is not usable by the customer without modification and the modifications are made by the seller, or (c) prewritten software that is modified so that the operation of the software is materially affected by the modifications.

Sec. 9. That section 77-2705, Revised Statutes Supplement, 1982, be amended to read as follows:

77-2705. (1) Every retailer selling, leasing, or renting tangible personal property for storage, use, or other consumption in this state shall register with the Tax Commissioner and give:

(a) The name and address of all agents operating in this state;

(b) The location of all distribution or sales houses or offices or other places of business in this state; and

(c) Such other information as the Tax Commissioner may require.

(2) Every person furnishing public utility service as defined in subdivision (4)(b) of section 77-2702 shall register with the Tax Commissioner and give:

(a) The address of each office open to the public in which such public utility service business is transacted with consumers; and

(b) Such other information as the Tax Commissioner may require.

(3) It shall be unlawful for any person to engage in or transact business as a seller within this state after June 1, 1967, unless a permit or permits shall have been issued to him or her as hereinafter prescribed. Every person desiring to engage in or to conduct business as a seller within this state shall file with the Tax Commissioner an application for a permit for each place of business. At the time of making such application, the applicant shall pay to the Tax Commissioner a permit fee of ten dollars for each permit.

(4) Every application for a permit shall:

(a) Be made upon a form prescribed by the Tax Commissioner;

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his or her place or places of business;

(c) Set forth such other information as the Tax Commissioner may require; and

(d) Be signed by the owner if he or she is a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person authorized by the corporation to sign such kinds of applications.

(5) After compliance with the provisions of subsections (1) to (4) of this section by the applicant, the Tax Commissioner shall grant and issue to each applicant a separate permit for each place of business within the state. A permit shall not be assignable; and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued and shall be valid and effective without further payment of fees until revoked by the Tax Commissioner.

(6)(a) Whenever the holder of a permit fails to comply with any provision of sections 77-2701 to 77-27,135 relating to the retail sales tax or with any rule or regulation of the Tax Commissioner relating to such tax prescribed and adopted under sections 77-2701 to 77-27,135, the Tax Commissioner upon hearing, after giving the person twenty days' notice in writing specifying the time and place of hearing and requiring him or her to show cause why his or her permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The Tax Commissioner shall give to the person written notice of the suspension or revocation of any of his or her permits. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. 7

(b) The Tax Commissioner shall have the power to restore permits which have been revoked, but shall not issue a new permit after the revocation of a permit unless he or she is satisfied that the former holder of the permit will comply with the provisions of sections 77-2701 to 77-27,135 relating to the retail sales tax and the regulations of the Tax Commissioner. A seller whose permit has been previously suspended or revoked shall pay the Tax Commissioner a fee of twenty-five dollars for the renewal or issuance of a permit in the event of a first revocation and fifty dollars for renewal after each successive revocation. 7 and

(c) The action of the Tax Commissioner may be appealed by the taxpayer in the same manner as a final

deficiency determination.

(7) For the purpose of more efficiently securing the payment, collection, and accounting for the sales and use taxes; and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to formulate and promulgate appropriate rules and regulations providing a form and method for the registration of exempt purchases and the documentation of exempt sales.

(8) If any person, firm, corporation, association, or the agent thereof presents an exempt sale certificate to the seller for tangible personal property which is purchased by a taxpayer or for a use other than those enumerated in Chapter 77, article 27, as exempted from the computation of sales and use taxes, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from the purchaser or the agent thereof a penalty of one hundred dollars or ten times the tax, whichever amount is larger, for each instance of such presentation and misuse of an exempt sale certificate. Such amount shall be in addition to any tax, interest, or penalty otherwise imposed.

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

Sec. 10. That section 77-2706, Revised Statutes Supplement, 1982, be amended to read as follows:

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

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

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

(4) Any person who gives a resale certificate to the seller for tangible personal property which he or she knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale,

lease, or rental by him or her in the regular course of business and each officer of any corporation which so gives a resale certificate shall be guilty of a misdemeanor.

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

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

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

resale certificate. This amount shall be in addition to any tax, interest, or penalty otherwise imposed.

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

Sec. 11. That section 77-2706.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

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

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

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

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

(2) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this section.

Sec. 12. That section 77-2711, Revised Statutes Supplement, 1982, be amended to read as follows:

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

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

(2) The Tax Commissioner may employ accountants,

auditors, investigators, assistants, and clerks necessary for the efficient administration of sections 77-2701 to 77-27,135, and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by sections 77-2701 to 77-2713.

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

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

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

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

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

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or

his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General or other legal representative of the state of the reports or returns of any taxpayer when information on the reports or returns is considered, by the Attorney General, to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency, (d) the furnishing of any information to the United States government or to states allowing similar privileges to the Tax Commissioner, or (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to sections 77-2701 to 77-27,135 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2701 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner. The Tax Commissioner may furnish to the Multistate Tax Commission any information contained in the tax returns and reports and related schedules and documents filed pursuant to the laws of this state and in the report of an audit or investigation made with respect thereto. Such information may be furnished solely for tax purposes. The Multistate Tax Commission may make such information available to the tax officials of any other state, the District of Columbia, or the United States and its territories for tax purposes.

~~(8)~~ (10) In all proceedings under the provisions of sections 77-2701 to 77-27,135, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of sections 77-2701 to 77-27,135, but may not

waive the minimum interest on delinquent taxes specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature.

Sec. 13. That section 77-2715.04, Revised Statutes Supplement, 1983, be amended to read as follows:

77-2715.04. (1) In addition to the sales tax imposed pursuant to section 77-2715.01, the State Board of Equalization and Assessment shall at its next meeting impose an additional one half of one per cent sales and use tax to commence on the first day of the first month following such meeting that is at least twenty days after such meeting and continuing until terminated pursuant to subsection ~~(4)~~ (5) of this section. All proceeds from this additional tax shall be paid to the Cash Reserve Fund.

(2) Any money in the Cash Reserve Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269 and any interest earned shall accrue to the ~~Cash Reserve~~ General Fund.

(3) Any interest earned from investment of money in the Cash Reserve Fund from September 1, 1983, to June 30, 1984, shall be transferred to the General Fund on or before July 31, 1984.

~~(3)~~ (4) The tax imposed under this section shall not be considered a rate increase for purposes of subsection (7) of section 77-2704.

(4) (5) Collection of the additional sales and use tax imposed by this section shall terminate on the earlier of the following dates: (a) The last day of the ninth month following the month in which the tax is first imposed, or (b) the last day of the month following the month in which deposits in the Cash Reserve Fund equal thirty million dollars. The State Treasurer shall notify the Tax Commissioner within three business days when deposits in the Cash Reserve Fund equal or exceed thirty million dollars. The Tax Commissioner shall cause proper notice to be given that the tax rate will change.

Sec. 14. That section 77-2715.06, Revised Statutes Supplement, 1983, be amended to read as follows:

77-2715.06. (1) There shall be allowed to resident individuals, as a credit against the tax imposed by sections 77-2714 to 77-27,135, a food sales tax credit equal to twenty-one dollars multiplied by the number of allowable personal exemptions claimed for individuals who are residents, exclusive of the extra exemptions allowable for age or blindness. In the event a dependent is claimed as an exemption on a federal return by a nonresident taxpayer who files no return in this state, such dependent resides in this state, and the support claimed by such nonresident taxpayer is substantially spent in this state, the taxpayer in this state who has legal custody of such dependent may claim such food sales tax credit for each such dependent. A refund shall be allowed to the extent

that the food sales tax credit exceeds the income tax payable by the resident individual for the taxable year but no refund shall be made in any amount less than two dollars.

(2) No individual who may be claimed as a personal exemption on another individual's return shall be entitled to a food sales tax credit or refund for himself or herself. If a food sales tax credit or refund is claimed on more than one return for the same individual, the Tax Commissioner is authorized to determine the individual entitled to claim the credit or refund provided herein.

(3) Any individual, other than a person who for more than six months of the taxable year is a resident patient or inmate of a public institution or an organization exempt from tax as a charitable institution, who maintains a permanent place of abode within this state, spending in the aggregate more than six months of the taxable year within this state, shall be conclusively presumed to have paid, or paid with respect to such personal exemptions, retail sales and use taxes imposed by this state equal to the maximum food sales tax credit allowable.

(4) The credits or refunds for sales taxes allowed by this section shall be claimed on income tax returns or in the case of an individual not having tax liability in this state on such forms or claims for refunds as the Tax Commissioner shall prescribe.

(5) Credits to minors, including any child whose parent or guardian is a recipient of aid to dependent children, shall be claimed by the parent or guardian.

(6) The credit authorized under this section shall be available for all tax years commencing, or deemed to commence, on or after January 1, 1983, and on or before March 31, 1983. ~~taxes paid in 1983 and claimed on a return filed in 1984.~~

~~(7) The provisions of this section shall terminate on December 31, 1984.~~

Sec. 15. That section 77-2716, Revised Statutes Supplement, 1983, be amended to read as follows:

77-2716. (1) There shall be subtracted from federal taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. The amount subtracted under the provisions of this subsection shall, except as provided in subsections (2) to (6) of this section, be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection; and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent

that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(2) For taxpayers subject to the tax under subsection (2) of section 77-2734, in lieu of the reduction for expenses contained in subsection (1) of this section, there shall be added to federal taxable income, the investment interest expense incurred by the taxpayer to purchase and maintain exempt securities as determined under subsection (3) of this section.

(3) The investment interest expense provided in subsection (2) of this section shall be determined by (a) dividing the taxpayer's average investment in exempt securities by the taxpayer's average total assets and multiplying such ratio by the taxpayer's total interest expense and (b) subtracting any interest disallowed under 26 U.S.C. sections 265 and 291.

(4) As used in this section, unless the context otherwise requires:

(a) Exempt securities shall mean the obligations that earn income exempt from taxation under subsection (1) of this section or under 26 U.S.C. section 103;

(b) Average investment in exempt securities shall mean the average of the aggregate tax basis in exempt securities at the beginning and the end of the taxable year;

(c) Average total assets shall mean the average of the aggregate tax basis in total assets at the beginning and end of the taxable year; and

(d) Total interest expense shall mean the total interest expense allowed as a deduction in computing federal taxable income plus any interest disallowed under 26 U.S.C. sections 265 and 291.

(5) Whenever it is necessary to properly reflect the ratio of investment in exempt securities to total assets, the Tax Commissioner may permit or require the computation of the average provided for in subsection (3) of this section using amounts from interim balance sheets.

(6) The taxpayer may use, in lieu of the tax basis for the computation in subsection (3) of this section, the amounts from a balance sheet included with the federal return or as required to be reported to federal or state regulatory agencies if (a) such amounts are not materially different from tax basis, (b) the amounts are prepared consistently from year to year, and (c) absent a change in circumstances, the amounts are consistently used by the taxpayer from year to year. The Tax Commissioner may require a taxpayer to use the alternative amounts in order to maintain consistency or may require the taxpayer to show that the amounts used do not materially differ from the tax basis.

(7) There shall be added to or subtracted from federal taxable income, as the case may be, the taxpayer's share of the fiduciary adjustment determined under the

provisions of section 77-2720-

Sec. 16. That section 77-2719, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2719. The tax liability of a resident estate or trust means its federal tax liability, modified by the addition or subtraction, as the case may be, of its share of the fiduciary adjustment determined under the provisions of section 77-2720-

Sec. 17. That section 77-2725, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2725. (1) The share of a nonresident estate or trust of items of income, gain, loss, and deduction entering into the definition of distributable net income and the share for purposes of section 77-2733 of a nonresident beneficiary of any estate or trust in estate or trust income, gain, loss, and deduction shall be determined as follows:-

(a) To the same amount of items of income, gain, loss, and deduction which enter into the definition of distributable net income there shall be added or subtracted, as the case may be, the modifications described in section 77-2722 to the extent they relate to items of income, gain, loss, and deduction which also enter into the definition of distributable net income. No modification shall be made under this section which has the effect of duplicating an item already reflected in the definition of distributable net income;

(b) The amount determined under subdivision (1)(a) of this section shall be allocated among the estate or trust and its beneficiaries, including, solely for the purpose of this allocation, resident beneficiaries, in proportion to their respective shares of federal distributable net income. The amounts so allocated shall and have the same character as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust, and

(c) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the net amount determined under subdivision (1)(a) of this section shall be in proportion to his share of the estate or trust income for such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

(2) The Tax Commissioner may by regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources in this state, and in the modifications related thereto, as may be appropriate and equitable.

Sec. 18. That section 77-2753, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2753. (1) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or other payments as defined in subsection (4) of this section which are taxable under the provisions of sections 77-2701 to 77-27,135 to a resident or nonresident individual whose wages are subject to withholding under the Internal Revenue Code shall deduct and withhold from such wages for each payroll period and from such payments a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under the provisions of sections 77-2701 to 77-27,135 with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by regulations of the Tax Commissioner.

(2) For purposes of this section an employee or payee shall be entitled to the same number of withholding exemptions as the number of withholding exemptions to which he or she is entitled for federal income tax withholding purposes. An employer or payor may rely upon the number of federal withholding exemptions claimed by the employee.

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

(4) Wages and other payments subject to withholding shall mean payments that are subject to withholding under the Internal Revenue Code of 1954, as amended, and are (a) payments made by employers to employees, except such payments subject to 26 U.S.C. section 3405 or 3406, or (b) payments of gambling winnings.

Sec. 19. That section 77-2754, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2754. Every employer or payor, making payment of wages or other payments subject to withholding,

shall furnish to each employee or payee in respect to the wages or payments paid by such employer or payor to such employee or payee during the calendar year on or before February 15 of the succeeding year, or, if his or her employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of wages is made, a written statement as prescribed by the Tax Commissioner showing the amount of wages or payments paid by the employer or payor to the employee or payee, the amount deducted and withheld as tax, and such other information as the Tax Commissioner shall prescribe. ~~Provided, that such~~ Such statement shall be compatible as to form and content with the statement required by the laws of the United States.

Sec. 20. That section 77-2755, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2755. Wages and payments upon which income tax is required to be withheld shall be taxable under the provisions of sections 77-2701 to 77-27,135 as if no withholding were required, but any amount of income tax actually deducted and withheld under the provisions of sections 77-2701 to 77-27,135 in any calendar year shall be deemed to have been paid to the Tax Commissioner on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of income tax for the taxable year beginning in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the Tax Commissioner.

Sec. 21. That section 77-2756, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2756. (1) Every employer or payor required to deduct and withhold income tax under the provisions of sections 77-2701 to 77-27,135 shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depository designated by the Tax Commissioner, the taxes so required to be deducted and withheld, except that for the fourth quarter of the calendar year, the employer or payor shall also file on or before February 15 of the succeeding year a copy of each statement furnished by such employer or payor to each employee or payee with respect to taxes withheld on wages or payments subject to withholding. Where the aggregate amount required to be deducted and withheld by any employer or payor for either the first or second month of a calendar quarter exceeds five hundred dollars, the employer or payor shall by the fifteenth day of the succeeding month pay over such aggregate amount to the Tax Commissioner or to a depository designated by the Tax Commissioner. The amount so paid shall be allowed as a credit against the liability shown on the employer's or payor's quarterly withholding return required by this section. The Tax

Commissioner may, by regulation, provide for the filing of returns and the payment of the tax deducted and withheld on other than a quarterly basis.

(2) Whenever any employer or payor fails to collect, truthfully account for, pay over, the income tax, or make returns of the income tax as required by this section, the Tax Commissioner may serve a notice requiring such employer or payor to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of such tax in such account until paid over to the Tax Commissioner. Such notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

Sec. 22. That section 77-2757, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2757. Every employer or payor required to deduct and withhold income tax under the provisions of sections 77-2701 to 77-27,135 is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the Tax Commissioner, and any additions to tax, penalties, and interest with respect thereto, shall be considered the tax of the employer or payor. Any amount of tax actually deducted and withheld shall constitute a trust fund in the hands of the employer or payor and shall be owned by the state. No employee or payee shall have any right of action against his or her employer or payor in respect to any money deducted and withheld from his or her wages or other payments and paid over to the Tax Commissioner in compliance or in intended compliance with the provisions of sections 77-2701 to 77-27,135.

Sec. 23. That section 77-2758, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2758. If an employer or payor fails to deduct and withhold income tax as required, and thereafter the tax against which such income tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer or payor, but the employer or payor shall not be relieved from liability for any additions to tax, penalties, or interest otherwise applicable in respect to such failure to deduct and withhold.

Sec. 24. That section 77-2769, Revised Statutes Supplement, 1983, be amended to read as follows:

77-2769. (1) Every resident and nonresident individual, corporation, and other entity taxed as a corporation under the Internal Revenue Code shall pay make a declaration of the estimated tax for the taxable year, in such form as the Tax Commissioner may prescribe, except ~~7 PROVIDED;~~ that (a) no payment of estimated tax ~~declaration~~ is required by an individual if the estimated tax can

reasonably be expected to be less than ~~forty three hundred~~ dollars, and (b) no ~~payment of estimated tax declaration~~ is required by a corporation or other entity taxed as a corporation under the Internal Revenue Code if the estimated tax can reasonably be expected to be less than ~~one four~~ hundred dollars.

(2)(a) Estimated tax for an individual shall mean the amount which the individual estimates to be his or her income tax under the provisions of sections 77-2714 to 77-27,135 for the taxable year less the amount which he or she estimates to be the sum of any credits allowable for tax withheld under section 77-2753, tax paid to another state under section 77-2730, and tax paid on gasoline and motor fuels used for agricultural, industrial, and nonhighway purposes under section 66-452.

(b) Estimated tax for a corporation or other entity taxed as a corporation under the Internal Revenue Code shall mean the amount which the corporation or business estimates to be its franchise or income tax under the provisions of sections 77-2714 to 77-27,135 for the taxable year less the amount which is estimated to be the sum of any credits allowable for in lieu of intangible tax paid under subsection (2) of section 77-2734 and tax paid on gasoline and motor fuels used for agricultural, industrial, and nonhighway purposes under section 66-452.

(3) If they are eligible to do so for federal tax purposes, a husband and wife may make a joint ~~declaration~~ payment of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint ~~declaration~~ payment is made but husband and wife elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

~~(4) An individual or corporation may amend a declaration under regulations prescribed by the Tax Commissioner.~~

~~(5) (4)~~ The ~~declaration~~ payment of estimated tax for an individual under a disability shall be made and filed in the manner provided in subsection (2) of section 77-2763 for an income tax return.

~~(6) (5)~~ The ~~declaration~~ and payment of estimated tax shall be ~~filed or paid, as the case may be,~~ on or before the dates prescribed by the laws of the United States for ~~filing declarations~~ and payment of estimated federal income tax, except that the Tax Commissioner, by rule and regulation, may establish other dates for ~~filing declarations~~ and payment of estimated tax.

~~(7) (6)~~ The application of the provisions of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Tax Commissioner.

~~(8) (7)~~ Payment of the estimated income tax or

any installment thereof, shall be considered payment on account of the income tax imposed under the provisions of sections 77-2714 to 77-27,135 for the taxable year.

Sec. 25. (1) A corporation may, after the close of the taxable year and on or before the fifteenth day of the third month thereafter, and before the day on which it files a return for such taxable year, file an application for an adjustment of an overpayment by it of estimated income tax for such taxable year. An application under this section shall not constitute a claim for credit or refund. The application shall be filed in such manner and form as the Tax Commissioner may prescribe by rules, regulations, and instructions. The application shall set forth: (a) The estimated income tax paid by the corporation during the taxable year; (b) the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year; (c) the amount of the requested adjustment; and (d) such other information for purposes of carrying out this section as may be required by rules and regulations.

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

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

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

(5) For purposes of this section, income tax liability shall mean the excess of the franchise or income

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

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

Sec. 26. That section 77-2770, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2770. (1)(a) The Tax Commissioner may grant a reasonable extension of time for filing any return, ~~declaration~~, statement, or other document, or for payment of income tax or estimated tax or any installment thereof, on such terms and conditions as he or she may require. Except in the case of a taxpayer who is abroad, no such extension or extensions shall exceed ~~six~~ a total of seven months.

(b) An extension of time granted for filing of a return, ~~or declaration~~, other than to a corporate taxpayer, shall for the purpose of this subsection extend the time for payment of any tax which may be due. ~~An~~ ~~7~~ ~~Provided~~, that an extension of time for filing any return ~~or declaration~~ granted by the Internal Revenue Service for other than a corporate taxpayer shall operate as an extension ~~hereunder~~ under this section.

(2) An extension ~~of three months~~ for the filing of the return of corporate income or corporate franchise taxes imposed by section 77-2734 shall be allowed any corporation or other entity taxed as a corporation if, in such manner and at such time as the Tax Commissioner may by regulation prescribe, there is filed on behalf of such corporation the form prescribed by the Tax Commissioner, and if such corporation pays, on or before the date prescribed for payment of the tax, determined without

regard to any extension of time for filing such return, the amount properly estimated as its tax; but this extension may be terminated at any time by the Tax Commissioner by mailing to the taxpayer notice of such termination at least ten days prior to the date for termination fixed in such notice. No extension of time for filing any corporate return shall be considered an extension of time for payment of corporate income or franchise tax unless such request is specifically filed with and granted by the Tax Commissioner.

The Tax Commissioner may grant reasonable additional extensions of time to file any corporate income or franchise tax return on such terms and conditions as he or she may require.

(3) If any extension of time is granted for payment of any amount of tax, the Tax Commissioner may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount of the tax for which the extension of time for payment is granted, on such terms and conditions as the Tax Commissioner may require.

Sec. 27. That section 77-2785, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2785. (1) The amount of income tax which is shown to be due on an income tax return, including revisions for mathematical errors, shall be deemed to be assessed on the date of filing of the return including any amended returns showing an increase of tax. In the case of a return properly filed without the computation of the tax, the tax computed by the Tax Commissioner shall be deemed to be assessed on the date when payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date provided in section 77-2777 if no protest is filed; or, if a protest is filed, then upon the date when the determination of the Tax Commissioner becomes final. If an amended return or report filed pursuant to the provisions of section 77-2775 concedes the accuracy of a federal change or correction, any deficiency in the income tax under sections 77-2701 to 77-27,135 resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return and such assessment shall be timely notwithstanding any other provisions of sections 77-2701 to 77-27,135. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment notwithstanding any other provision of sections 77-2701 to 77-27,135.

(2) If the mode or time for the assessment of income tax under the provisions of sections 77-2701 to 77-27,135, including interest, additions to tax, and penalties, is not otherwise provided for, the Tax Commissioner may establish the same by regulation.

(3) The Tax Commissioner may, at any time within

the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section 77-2776 where applicable, whenever it is found that any assessment is imperfect or incomplete in any material aspect.

(4) If the Tax Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, by the frivolous objections of any person to compliance with sections 77-2701 to 77-27,135, or by the attempt of any person to impede the administration of such sections, he or she shall, notwithstanding the provisions of section 77-2786, immediately assess such tax, including interest and additions to tax, and penalties as provided by law and give notice and demand for payment to such person. When an assessment is made under this subsection, collection proceedings may be stayed by application for review and the posting of such security as may be required by the Tax Commissioner under section 77-27,129.

Sec. 28. That section 77-2788, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2788. (1) If any amount of income tax imposed by the provisions of sections 77-2701 to 77-27,135, including tax withheld by an employer or payor, is not paid on or before the last date prescribed for payment, interest on such amount at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid for the period from such last date to the date paid.

(2) For purposes of this section, the last date prescribed for the payment of tax shall be determined without regard to any extension of time.

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

(4) Interest prescribed under this section on any income tax including tax withheld by an employer or payor shall be paid on notice and demand and shall be assessed, collected, and paid in the same manner as income taxes. Any reference to the income tax imposed by the provisions of sections 77-2701 to 77-27,135 shall be deemed also to refer to interest imposed by this section on such tax.

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

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

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

(8) Any portion of the income tax imposed by sections 77-2701 to 77-27,135 or any interest, penalty, or addition to ~~said~~ such tax which has been erroneously refunded and which is recoverable by the Tax Commissioner shall bear interest at the rate of six per cent per annum from the date of payment of the refund.

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

Sec. 29. That section 77-2790, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2790. (1) If any part of a deficiency is the result of negligence or intentional disregard of rules and regulations, but without intent to defraud, the Tax Commissioner may add to the tax an amount equal to five per cent of the deficiency.

(2) If any part of a deficiency is the result of fraud, the Tax Commissioner may add to the tax an amount equal to fifty per cent of the deficiency. This amount shall be in lieu of any amount determined under subsection (1) of this section.

(3) If any taxpayer fails to file a declaration of estimated tax when required under sections 77-2701 to 77-27,135, or fails to pay all or any part of an installment of any tax due, he or she shall be deemed to have made an underpayment of estimated tax. The Tax Commissioner shall determine the amount of underpayment of estimated tax in accordance with the laws of the United States.

(4) If any employer or payor, without intent to evade or defeat any income tax imposed by sections 77-2701 to 77-27,135 or the payment thereof, shall fail to make a return and pay a tax withheld by him or her at the time required by or under the provisions of sections 77-2701 to 77-27,135, such employer or payor shall be liable for such taxes and shall pay the same together with interest thereon and any addition to tax assessed pursuant to subsection (1) of this section. Such interest and addition to tax shall not be charged to or collected from the employee or payee

by the employer or payor. The Tax Commissioner shall have the same rights and powers for the collection of such tax, interest, and addition to tax against such employer or payor as are now prescribed by sections 77-2701 to 77-27,135 for the collection of income tax against a taxpayer.

(5) If any person required to collect, truthfully account for, and pay over the income tax imposed by sections 77-2701 to 77-27,135 willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect a penalty equal to the total amount of the tax evaded, ~~or~~ not collected, or not accounted for and paid over. No addition to tax under subsection (1) or (2) of this section shall be imposed for any offense to which this subsection applies.

(6) If any person with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any income tax, or to make, render, sign, or certify any return ~~or declaration~~ of estimated tax, or to supply any information within the time required, the Tax Commissioner may impose, assess, and collect a penalty of not more than one thousand dollars, in addition to any other amounts required under the income tax provisions of sections 77-2701 to 77-27,135.

(7) The additions to the income tax and penalties relating thereto provided by the provisions of sections 77-2701 to 77-27,135 shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes and any reference in sections 77-2701 to 77-27,135 to income tax or the tax imposed by the provisions of sections 77-2701 to 77-27,135 shall be deemed also to refer to additions to the tax and penalties provided by this section. For purposes of the deficiency procedures provided in section 77-2776, this subsection shall not apply to:

(a) Any addition to tax under subsection (1) of section 77-2789, except as to that portion attributable to a deficiency;

(b) Any addition to tax for ~~failure to file a declaration or~~ underpayment of estimated tax as provided in subsection (3) of this section; or

(c) Any additional penalty under subsection (6) of this section.

(8) For purposes of subsections (1) and (2) of this section relating to deficiencies resulting from negligence or fraud, the amount shown as the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any

extension of time for such filing.

(9) For purposes of subsections (5) and (6) of this section, the term person shall include an individual, corporation, or partnership, or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Sec. 30. That section 77-2791, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2791. (1) The Tax Commissioner, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by the tax laws of this state on the person who made the overpayment, and the balance shall be refunded by the State Treasurer out of the Tax Refund Fund provided for in section 77-27,132.

(2) If the amount allowable as a credit for income tax withheld from the taxpayer exceeds his or her tax to which the credit relates, the excess shall be considered an overpayment.

(3) If there has been an overpayment of tax required to be deducted and withheld under section 77-2753, refund shall be made to the employer or the payor only to the extent that the amount of the overpayment was not deducted and withheld by the employer or the payor.

(4) The Tax Commissioner may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year.

(5) If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

Sec. 31. That section 77-27,104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,104. (1) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount of such tax, including any interest, or additional amount either of tax or assessable penalty, together with any costs that may accrue in addition thereto, shall be a lien in favor of the State of Nebraska upon all property and rights to property, whether real or personal, belonging to such person.

(2) Unless another date is specifically fixed by law, the lien imposed by subsection (1) of this section shall arise at the time of the assessment and shall continue until the liability for the amount so assessed, remain in effect for five years from the time of filing for record or until such amounts have been paid or a judgment

against the taxpayer arising out of such liability, is satisfied or becomes unenforceable by reason of lapse of time.

(3) The lien imposed in subsection (1) of this section shall be valid as against any subsequent creditor when notice of such lien and the sum due has been filed by the Tax Commissioner with the clerk of the county in which the property subject to the lien is situated. In the case of any prior mortgage on real property or secured transaction covering personal property so written as to secure a present debt and also future advances, the lien herein provided, when notice thereof has been filed in the proper clerk's office, shall be subject to such prior lien unless the Tax Commissioner also notified the lienholder of the recording of such lien in writing, in which case the lien of any indebtedness thereafter created thereunder shall be junior to the lien herein provided for.

Sec. 32. That section 77-27,119, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,119. (1) The Tax Commissioner shall administer and enforce the income tax imposed by sections 77-2714 to 77-27,135 and he or she is authorized to conduct hearings and to make such rules and regulations and to require such facts and information to be reported as he or she may deem necessary to enforce the income tax provisions of sections 77-2714 to 77-27,135, ~~except~~ ; ~~Provided~~, that such rules, regulations, and reports shall not be inconsistent with the laws of this state or the laws of the United States. The Tax Commissioner may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(2)(a) The Tax Commissioner may prescribe the form and contents of any return or other document required to be filed under the income tax provisions of sections 77-2714 to 77-27,135. ~~Such ; Provided, that such return or other document shall be compatible as to form and content with the return or document required by the laws of the United States. Commencing ; and provided further, that commencing with the taxable year 1971, the form shall have a place where the taxpayer shall designate the school district in which he or she lives and the county in which the district is located. The Tax Commissioner shall promulgate such rules and regulations as may be necessary to insure compliance with this requirement.~~

(b) The State Department of Education, with the assistance and cooperation of the Department of Revenue, shall develop a uniform system for numbering all school districts in the state. Such system shall be consistent with the data processing needs of the Department of Revenue. Such system shall be fully operational by December 31, 1980, and shall be used in all tax years

thereafter for the school district identification required by subsection (2)(a) of this section.

(c) The proper filing of an income tax return shall consist of the submission of such form as prescribed by the Tax Commissioner or an exact facsimile thereof with sufficient information provided by the taxpayer on the face of the form from which to compute the actual tax liability. Each taxpayer shall include the correct social security number or state identification number on the face of the form. A filing is deemed to occur when the required information is provided.

(3) The Tax Commissioner, for the purpose of ascertaining the correctness of any return or other document required to be filed under the income tax provisions of sections 77-2714 to 77-27,135, for the purpose of determining corporate income, corporate franchise, individual income, and withholding tax due, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters and may, by summons, require the attendance of the person responsible for rendering such return or other document, or remitting any tax, or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his or her information, with power to administer oaths to such person or persons. Such examination shall be made in the case of any corporation which (a) is not incorporated or domesticated in Nebraska, (b) has gross annual sales of ten million dollars or more, and (c) is not examined by a state with which Nebraska has an agreement for the exchange of examination or audit information.

(4) The time and place of examination pursuant to the provisions of this section shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons.

(5) No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract, or a portion of any report or return is

furnished, or any other person, to divulge, make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing the provisions of sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or proceeding under the provisions of the tax law to which he or she is a party, or on behalf of any party to any action or proceeding under the provisions of sections 77-2714 to 77-27,135 when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of ~~said~~ such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General or other legal representatives of the state of the report or return of any taxpayer who shall bring an action to review the tax based thereon, or against whom an action or proceeding for collection of tax has been instituted, (d) to prohibit furnishing to the Nebraska Workmen's Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, or (e) to prohibit the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04. Any person who violates the provisions of this subsection shall be guilty of a felony and shall, upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court, together with costs of prosecution. If the offender is an officer or employee of the state, he or she shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

(7) Reports and returns required to be filed under income tax provisions of sections 77-2714 to 77-27,135 shall be preserved for three years and thereafter until the Tax Commissioner orders them to be destroyed.

(8) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Secretary of the Treasury of the United States or his or her delegates, or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer, or may furnish to such officer or his or her authorized representative an abstract of the return of income of any taxpayer or supply him or her with information concerning an item of income contained in any return; or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Tax Commissioner of this state as the officer charged with the administration of the income tax imposed by the provisions of sections 77-2714 to 77-27,135.

(9) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the provisions of sections 77-2701 to 77-27,135 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

~~(9)~~ (10) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under the provisions of sections 77-2714 to 77-27,135, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the regulations of the Tax Commissioner. The Tax Commissioner may furnish to the Multistate Tax Commission any information contained in the tax returns and reports and related schedules and documents filed pursuant to the laws of this state and in the report of an audit or investigation made with respect thereto. Such information may be furnished solely for tax purposes, and the Multistate Tax Commission may make such information available to the tax officials of any other state, the District of Columbia, or the United States and its territories for tax purposes.

~~(10)~~ (11) The Tax Commissioner shall compile the school district information required by subsection (2) of this section. Insofar as it is possible, such compilation shall include, but not be limited to, the total adjusted gross income of each school district in the state. The Tax Commissioner shall promulgate such rules and regulations

as may be necessary to insure that such compilation does not violate the confidentiality of any individual income tax return, nor conflict with any other provisions of state or federal law.

Sec. 33. That section 77-27,125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,125. If any tax, report, claim, statement, notice, petition, or other document including, to the extent authorized by the Tax Commissioner, a return ~~or declaration~~ of estimated tax, required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of sections 77-2701 to 77-27,135 is, after such period or such date, delivered by United States mail to the Tax Commissioner, or the officer or person with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This section shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the Tax Commissioner. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the Tax Commissioner. To the extent that the Tax Commissioner shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. The provisions of this section shall apply in the case of postmarks not made by the United States post office only if and to the extent provided by regulations of the Tax Commissioner. When the last day prescribed under the authority of sections 77-2701 to 77-27,135, including any extension of time, for performing any act falls on Saturday, Sunday, or a day considered a holiday by the Tax Commissioner's office, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a day considered a holiday by the Tax Commissioner's office. The Tax Commissioner shall, upon request, give a receipt for any document filed under the provisions of sections 77-2701 to 77-27,135.

Sec. 34. That section 77-27,130, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,130. (1) If the amount of a deficiency determined by the Tax Commissioner is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer without the making of a claim therefor, or, if payment has not been made, shall be abated.

(2) If the deficiency determined by the Tax Commissioner is disallowed by the court of review, the taxpayer shall have his or her costs as they would be allowable under the provisions of section 77-27,129. If the deficiency is disallowed in part, the court in its discretion may award the taxpayer a proportionate part of his or her costs.

(3) An assessment of a proposed income deficiency by the Tax Commissioner shall become final upon the expiration of the period specified in section 77-2777 for filing a written protest against the proposed assessment if no such protest has been filed within the time provided or, if the protest provided in section 77-2778 has been filed, upon the expiration of time provided for filing a petition for judicial review, ~~or~~ upon the final judgment of the reviewing court, or upon the rendering by the Tax Commissioner of a decision pursuant to the mandate of the reviewing court. Notwithstanding the foregoing, for the purpose of making a petition for the review of a determination of the Tax Commissioner, the determination shall be deemed final on the date the notice of decision is sent by certified mail or registered mail to the taxpayer as provided in section 77-2779.

(4) If any person institutes proceedings merely for delay or raises frivolous objections to compliance with sections 77-2701 to 77-27,135, the Tax Commissioner may apply to a judge of the district court for the county where such person resides for damages in an amount not in excess of five thousand dollars for each tax year to be awarded to the State of Nebraska for expenses incurred by the Tax Commissioner in securing compliance. Damages so awarded by the court shall be payable upon notice and demand by the Tax Commissioner and shall be collected in the same manner as delinquent taxes under sections 77-2701 to 77-27,135.

Sec. 35. That section 81-1247, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1247. Hotel shall mean any facility in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, campgrounds, courts, lodging houses, inns, state-operated hotels, and nonprofit hotels, but hotels shall not be defined so as to include hospitals, sanitariums, nursing homes, ~~or~~ chronic care centers, or dormitories or facilities operated by an educational institution and regularly used to house students.

Sec. 36. The Revisor of Statutes shall place sections 1 to 3 of this act in Chapter 77, article 21, and section 24 of this act in Chapter 77, article 27.

Sec. 37. Sections 18 and 38 of this act shall be operative for all taxable years commencing, or deemed to commence, on or after January 1, 1985. Section 25 of this act shall be operative for all taxable years commencing on

or after January 1, 1984. The remaining sections of this act shall become operative on their effective date.

Sec. 38. That original section 77-2753, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 39. That original sections 77-2103 to 77-2105, 77-2706.01, 77-2719, 77-2725, 77-2754 to 77-2758, 77-2770, 77-2785, 77-2788, 77-2790, 77-2791, 77-27,104, 77-27,119, 77-27,125, 77-27,130, and 81-1247, Reissue Revised Statutes of Nebraska, 1943, sections 77-2102, 77-2705, 77-2706, and 77-2711, Revised Statutes Supplement, 1982, and sections 77-2702, 77-2715.04, 77-2715.06, 77-2716, and 77-2769, Revised Statutes Supplement, 1983, and also sections 77-2720, 77-2722, and 77-2726, Reissue Revised Statutes of Nebraska, 1943, are repealed.