

LEGISLATIVE BILL 273

Approved by the Governor May 17, 1985

Introduced by Revenue Committee, V. Johnson, 8,
Chairperson; Landis, 46; Miller, 37;
Rogers, 41; Hartnett, 45; Hefner, 19;
Sieck, 24

AN ACT relating to revenue and taxation; to amend sections 66-410.06, 66-514, 66-605, 66-616, 66-618, 66-631, 77-1342, 77-2106.01, 77-2709, 77-2717, 77-2727, 77-2730, 77-2772, 77-2781, 77-2786, 77-2793, 77-27,105, and 81-1561, Reissue Revised Statutes of Nebraska, 1943, and sections 66-410.03, 66-602, 66-606, 66-607, 66-619, 66-624, 66-1047, 66-1048, 66-1050, 66-1055, 76-214, 77-2701, 77-2702, 77-2703, 77-2704, 77-2708, 77-2712, 77-2715, 77-2716, 77-2734.01, 77-2734.03, 77-2734.10, 77-2734.12, 77-2734.14, 77-2734.15, 77-2769, 77-2788, 77-2790, and 77-27,119, Revised Statutes Supplement, 1984; to adopt the Tax Refund Setoff Act; to provide for the electronic transfer of funds; to change the amount of security required for the importation of fuels; to provide for personal liability of corporate officers and employees as prescribed; to provide an exemption for certain quantities of fuel; to change provisions relating to the taxation of special fuels; to provide for exemption certificates; to authorize credits and refunds; to require cash bonds; to create funds; to require license revocation in certain circumstances; to provide for a committee; to change provisions relating to energy tax credits; to require certain information on real estate deeds; to change a time limit for filing certain estate tax claims; to change provisions relating to sales and use taxes and income taxes; to define and redefine terms; to change and eliminate exemptions; to provide for a refund for sales and use taxes paid for certain equipment; to change provisions relating to the filing of returns and mailing of notices; to change provisions relating to corporate income tax, taxation of estates and trusts, and partnership taxation; to change powers and duties of the Tax Commissioner; to provide penalties; to provide duties for the Revisor of Statutes; to eliminate the Ad Valorem Advisory Committee; to harmonize provisions; to

provide operative dates; and to repeal the original sections, and also sections 77-3,101 to 77-3,108, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. Sections 1 to 11 of this act shall be known and may be cited as the Tax Refund Setoff Act.

Sec. 2. As used in the Tax Refund Setoff Act, unless the context otherwise requires, agency shall mean the Department of Revenue or the federal Internal Revenue Service.

Sec. 3. The purpose of the Tax Refund Setoff Act is to provide the Tax Commissioner with the authority to enter into an agreement with the Commissioner of Internal Revenue to establish a reciprocal tax refund setoff system substantially similar to such act. The Tax Commissioner shall not enter into such agreement unless the Commissioner of Internal Revenue is authorized by federal law to enter into a substantially similar agreement offsetting delinquent state taxes.

Sec. 4. The tax refund setoff system shall allow the state government to offset a person's delinquent federal tax liability against any state tax refund due to such person. The delinquent tax liability shall include all tax liability, interest, penalties, fees, and any other charges accruing pursuant to the taxing laws of the federal government. This tax refund setoff system shall be in addition to and not a substitute for any other remedy available to collect such delinquencies.

Sec. 5. The Commissioner of Internal Revenue shall provide a system to identify persons having delinquent tax liability under federal taxing laws.

On or before dates specified in the agreement, the Commissioner of Internal Revenue shall supply the Department of Revenue with information necessary to identify such persons and shall certify in writing the amount of the liability. Such information shall be confidential.

In the case of a joint tax return it shall be presumed that each spouse contributed one half of the amount upon which the refund is based. If only one of the spouses filing the return is identified as a person having a delinquent tax liability, the other spouse shall receive one half of the refund unless this presumption is rebutted by the agency or the spouse.

Sec. 6. (1) If the Department of Revenue determines that a person identified as having a delinquent tax liability is entitled to a tax refund:

(a) The Department of Revenue shall transfer the full amount of the refund or the amount equal to any debts owed the state or any of its political subdivisions, whichever is less, as necessary to apply toward

satisfaction of the liability;

(b) The Department of Revenue shall transfer the amount of any balance of the refund or the amount certified by the Commissioner of Internal Revenue as delinquent tax liability, whichever is less, to the Commissioner of Internal Revenue; and

(c) Any remaining balance of the refund shall be forwarded to the taxpayer in the usual manner.

(2) In the case of a joint return when only one spouse is a person identified as having a delinquent tax liability, if the Department of Revenue has reason to believe that the spouse having the liability did in fact contribute more or less than the one half contribution as provided in section 5 of this act, the Department of Revenue shall transfer the amount of the refund deemed attributable to the spouse with the liability as provided in subsection (1) of this section.

Sec. 7. Within thirty days of a transfer pursuant to section 6 of this act, the Department of Revenue shall notify the person, and his or her spouse in the case of a joint return, of the transfer. If the Commissioner of Internal Revenue is involved with the transfer, a copy of the notice and any correspondence shall be sent to the commissioner. The notice shall state:

(1) The basis for the claim to the refund;

(2) The intention to apply the refund or a portion against the delinquent tax liability;

(3) That the person has the opportunity to contest the validity and amount of the delinquent tax liability by applying to the Commissioner of Internal Revenue in writing for a hearing and the time period after the date of the mailing of the notice within which the appeal must be filed;

(4) The name and mailing address of the agency to which the application for a hearing must be sent;

(5) The effect of a failure to apply in writing for a hearing within the prescribed period; and

(6) In the case of a joint return (a) the presumption provided in section 5 of this act, (b) that the presumption may be rebutted, (c) whether both or just one of the spouses has a delinquent tax liability, and (d) the percentage of the refund which the agency attributes to the spouse or spouses with the delinquent tax liability.

Sec. 8. A written application for a hearing pursuant to section 7 of this act shall be effective upon mailing the application, postage prepaid and properly addressed, to the appropriate agency.

Sec. 9. If the Department of Revenue receives a written application for a hearing, it shall proceed with notice and hearing as for a contested case pursuant to sections 84-913 to 84-916. The validity and amount of the liability shall be determined and any adjustments made. No issues shall be reconsidered at the hearing which have

previously been litigated. An appeal of the final decision may be made pursuant to sections 84-917 to 84-919.

Sec. 10. In the case of an improper setoff, the agency receiving the benefit of the setoff by having a purportedly delinquent tax paid shall be liable to the taxpayer for payment of any setoff, penalty, and interest.

Sec. 11. The Tax Commissioner may adopt and promulgate rules and regulations necessary to accomplish the purpose of the Tax Refund Setoff Act.

Sec. 12. In order to provide greater efficiency in the administration of the taxes collected by the state and convenience for the taxpayers of this state, the Director of Administrative Services and the State Treasurer may establish and operate an electronic funds transfer system for the collection of taxes and the payment of refunds. The Department of Administrative Services and the Department of Revenue shall jointly establish the procedures necessary to implement the system.

The use of electronic funds transfer or any other payment means by the state shall not create any rights that would not have been created had an individual state warrant been used as the payment medium. The use of electronic funds transfer or any other individual payment to the state shall not create any rights that would not have been created had an individual check been used as the payment medium to the state.

Sec. 13. That section 66-410.03, Revised Statutes Supplement, 1984, be amended to read as follows:

66-410.03. (1) The advance arrangements referred to in section 66-410.02 shall include the procuring of a permit and the furnishing and maintaining of security as defined in section 66-404 in a sum to be fixed and determined by the Tax Commissioner but not less than one thousand dollars to assure the required reporting, payment of tax, keeping of records, and payment of any penalties. The amount of security as fixed and determined by the Tax Commissioner shall be a minimum of one thousand dollars and up to approximately two times the average ~~monthly~~ liability for the reporting period of the permitholder. Such security shall run to the Department of Revenue of the State of Nebraska and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such operator is liable, whether such liability was incurred prior to or after such security is filed.

(2) Such permit may be obtained upon application to the Tax Commissioner. The Tax Commissioner shall charge a fee of one dollar for each permit issued. The holder of a permit under this section shall have the privilege of bringing into this state in the fuel supply tanks of motor vehicles any amount of motor vehicle fuel or special fuel to be used in the operation of the vehicles and for that privilege shall pay Nebraska motor vehicle fuel or special fuel taxes.

(3) Each vehicle operated into or through Nebraska in interstate operations using motor vehicle fuel or special fuel acquired in any other state shall carry in or on each vehicle a duplicate of the permit required in this section. All fees collected shall be deposited in the state treasury and by the State Treasurer credited to the Highway Cash Fund.

(4) In lieu of the permit and security required by subsection (1) of this section, the Department of Revenue shall provide for a trip permit to be issued. Such trip permits shall be issued by various vendor stations within the state, as determined appropriate by the Department of Revenue, for a fee of ten dollars. Such permits shall be valid for a period of seventy-two hours. No more than three permits shall be used by any one owner or lessee during a single month. The Department of Roads shall act as an agent for the Department of Revenue in collecting the fees prescribed in this subsection and shall remit all such fees collected to the State Treasurer who shall place such money in the Highway Cash Fund. Such trip permits shall be available at weighing stations operated and maintained by the Department of Roads and at various vendor stations as determined appropriate by the Department of Roads. Trip permits shall be obtained at the first available location, whether that be a weighing station or a vendor station. The vendor stations shall be entitled to collect and retain an additional fee of ten per cent of the fee collected pursuant to this subsection as reimbursement for the clerical work of issuing the permits.

Sec. 14. That section 66-410.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-410.06. (1) If any taxpayer neglects or refuses to file the report due for any reporting period, or to pay the tax provided by section 66-410.04, due for any reporting period, within the time prescribed for the filing of such report or the payment of such tax, as provided in section 66-410.04, there shall automatically accrue a penalty of twenty-five dollars. If no motor vehicle fuel was used in the State of Nebraska during that period, a penalty of twenty-five dollars shall be assessed against such taxpayer for failure to make a report setting forth such fact. The Tax Commissioner may in his or her discretion waive any and all penalties incurred upon sufficient showing by the taxpayer that such penalties should be waived.

(2)(a) As soon as practical after a report is filed, the Tax Commissioner shall examine it to determine the correct amount of tax. If the Tax Commissioner finds that the amount of tax shown on the return is less than the correct amount, he or she shall notify the taxpayer of the amount of the deficiency proposed to be assessed. Such

amount shall constitute a final assessment together with interest and penalties thirty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the Tax Commissioner within such thirty-day period.

(b) If the taxpayer fails to file a report, the Tax Commissioner shall estimate the taxpayer's liability from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency. Such amount shall constitute a final assessment together with interest and penalties thirty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the Tax Commissioner within such thirty-day period.

(c) The final assessment provisions of this section shall constitute a final decision of the agency for purposes of Chapter 84, article 9.

(d) Any corporate officer or employee with the authority to decide whether the corporation will pay the taxes imposed upon a corporation by Chapter 66, article 4, or to perform any other act required of a corporation under such article shall be personally liable for the payment of such taxes or any penalties in the event of willful failure on his or her part to have the corporation perform such act.

Sec. 15. That section 66-514, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-514. The transportation and delivery by vehicles upon the public highways of this state of motor vehicle fuel, kerosene, distillate, or other petroleum products of a highly inflammable character in quantities of not more than eighteen hundred gallons on any one vehicle or in quantities of not more than five thousand gallons on any one vehicle whose predominant use is to fill tanks on farms is declared to be exempt from the provisions of sections 66-501, and 66-512, and 66-514 to 66-522. The transportation of such commodities so exempted is incidental to the necessary distribution for sale and use thereof and in the normal use of the highways of this state creates no extraordinary hazard to public safety. No such motor vehicle fuel, kerosene, distillate, or other petroleum products of a highly inflammable character transported under the above exemption shall be exempt from the provisions of the tax or inspection laws of this state. All other transportation of motor vehicle fuels, kerosene, distillate, or other petroleum products of a highly inflammable character on any highway, road, or street in this state, except in drums or similar containers of not more than one hundred ten gallons each, and which are not part of the vehicle transporting the same, is prohibited except as provided in sections 66-516 to 66-518.

Sec. 16. That section 66-602, Revised Statutes

Supplement, 1984, be amended to read as follows:

66-602. As used in sections 66-601 to ~~66-640~~ 66-649 and sections 18 and 24 to 30 of this act, unless the context otherwise requires:

(1) Person shall mean every natural person, fiduciary, association, or corporation. Whenever used in sections 66-601 to ~~66-640~~ 66-649 and sections 18 and 24 to 30 of this act prescribing and imposing a fine, imprisonment, or both, the word person as applied to an association shall mean the partners or members thereof;

(2) Motor fuel tax administrator shall mean the Tax Commissioner;

(3) Highway shall mean every way or place generally open to the use of the public for the purpose of vehicular travel, even though such way or place may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;

(4) Special fuel shall mean all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined in subdivision (2) of section 66-401;

(5) Use shall mean the receipt, delivery, or placing of special fuels by a special fuel dealer into a storage facility designed or equipped to fuel motor vehicles or the fuel supply tank or tanks of any motor vehicle while such vehicle is within this state;

(6) Special fuel dealer shall mean any person who is licensed pursuant to section 66-607 to deliver special fuel into special fuel storage facilities designed or equipped to fuel motor vehicles or the fuel tank or tanks of a motor vehicle;

(7) Special fuel user shall mean any person who is not a special fuel dealer, who has special fuel storage facilities ~~that are~~ designed or equipped to fuel a motor ~~vehicle~~ vehicles, and who owns or has licensed one or more vehicles that (a) are propelled by the type of special fuel stored, (b) are not subject to section 66-410.02, and (c) are defined in subdivisions (16) and (25) of section 60-301; and

(8) Motor vehicle shall mean any vehicle propelled by an internal combustion engine or which uses electricity in whole or in part as the means of propulsion and licensed, or subject to licensing, for operation upon the highways, except those buses engaged entirely in transportation of passengers for hire within municipalities or in and within a radius of six miles thereof.

Sec. 17. That section 66-605, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-605. In addition to the tax imposed pursuant to sections 66-605.02 and 66-605.03, there is hereby

levied and imposed an excise tax of ten and one half cents per gallon on the use, within the meaning of the word use as defined in subdivision (5) of section 66-602, of special fuel in any motor vehicle as defined in subdivision (7) (8) of section 66-602. The tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such dealer and be paid over to the motor fuel tax administrator as provided by sections 66-601 to 66-649 66-649 and sections 18 and 24 to 30 of this act. The tax, with respect to all special fuel delivered by a special fuel dealer into special fuel storage facilities designed or equipped to fuel motor vehicles, shall attach at the time of such delivery, unless the recipient of the special fuel provides a certificate of exemption. Such tax shall be collected by the dealer and be paid over to the motor fuel tax administrator as provided in sections 66-601 to 66-649 and sections 18 and 24 to 30 of this act.

Sec. 18. (1) The purchaser of special fuels that are being delivered into a special fuel storage facility designed or equipped to fuel motor vehicles may present an exemption certificate to the special fuel dealer when (a) the storage facility is not used to fuel motor vehicles as defined in subsection (8) of section 66-602, (b) all motor vehicles fueled from the storage facility have attached a valid special fuel user permit, or (c) the owner has a valid special fuel dealer's license for the location of the storage facility.

(2) Any person who wrongfully claims an exemption and presents an exemption certificate shall be liable for the tax on the special fuel. The motor fuel tax administrator shall, on the basis of information available to him or her, determine the tax that would have been due on such transaction and assess the tax against such person. The motor fuel tax administrator shall add to such tax liability a penalty of one thousand dollars or ten times the amount of tax that is due, whichever is greater, plus interest at the rate provided by section 45-104.01, as such rate may from time to time be adjusted by the Legislature, except that such penalty may be waived or reduced at the discretion of the motor fuel tax administrator. An assessment made by the motor fuel tax administrator shall be presumed to be correct, and in any case when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that the assessment is erroneous or excessive.

Sec. 19. That section 66-606, Revised Statutes Supplement, 1984, be amended to read as follows:

66-606. It shall be unlawful for any person to act as a special fuel dealer to deliver special fuel into a special fuel storage facility designed or equipped to fuel

motor vehicles or the supply tank or tanks of any motor vehicle that does not have attached a special fuel user permit in this state unless such person is the holder of an uncanceled special fuel dealer's license issued to him or her by the motor fuel tax administrator. The use of special fuel in this state by any person shall be unlawful unless such person owning or operating a motor vehicle has obtained special fuel which was delivered or placed into the fuel supply tank of such motor vehicle by a licensed special fuel dealer, or is a special fuel user who holds the appropriate valid special fuel user permit or permits.

Sec. 20. That section 66-607, Revised Statutes Supplement, 1984, be amended to read as follows:

66-607. Application for a special fuel dealer's license shall be made to the motor fuel tax administrator together with a fee of ten dollars to cover the cost of issuing the license. An uncanceled special fuel dealer's license shall be required for each separate place of business or location where special fuels are delivered or placed into the fuel supply tank of a motor vehicle or from which deliveries to special fuel storage facilities designed or equipped to fuel motor vehicles are made. All fees collected shall be deposited in the state treasury and by the State Treasurer credited to the General Fund.

Sec. 21. That section 66-616, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-616. For each location where special fuel is delivered or placed into the fuel supply tank of a motor vehicle or from which fuel is delivered into a special fuel storage facility designed or equipped to fuel motor vehicles, the special fuel dealer making or receiving such delivery shall prepare and maintain such records as the motor fuel tax administrator may reasonably require with respect to all such deliveries, and with respect to inventories, receipts, purchases, and sales or other dispositions of special fuel.

Sec. 22. That section 66-618, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-618. For the purpose of determining the amount of his or her liability for the tax imposed by the provisions of sections 66-601 to 66-640 66-649 and sections 18 and 24 to 30 of this act, each special fuel dealer shall file with the motor fuel tax administrator, on forms prescribed by the administrator, a monthly tax return. The return shall contain a declaration, by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification. The return shall show, with reference to each location at which special fuel is delivered or placed by such dealer into a fuel supply tank of any motor vehicle or from which special fuel is

delivered into special fuel storage facilities designed or equipped to fuel motor vehicles, such information as the motor fuel tax administrator may reasonably require for the proper administration and enforcement of the provisions of sections 66-601 to 66-640; PROVIDED, 66-649 and sections 18 and 24 to 30 of this act, except that if a special fuel dealer is also a wholesale distributor of a special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, or from which special fuel is delivered into special fuel storage facilities designed or equipped to fuel motor vehicles and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the administrator covering such location need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer shall file the return on or before the twentieth day of the next succeeding calendar month following the monthly period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed on time if mailed in an envelope properly addressed to the motor fuel tax administrator, and postmarked before midnight of the final filing date, except , PROVIDED, that for good cause the administrator may grant a taxpayer reasonable extensions of time for filing, but not to exceed ten days in the aggregate for any one return.

Notwithstanding any other provision of this section, the motor fuel tax administrator may by rule and regulation permit or require quarterly, semiannual, or annual reports and tax payments from each special fuel dealer who has small tax liabilities, except that no such reports or payments may be permitted or required when the tax liability exceeds one hundred fifty dollars in any quarter, three hundred dollars in any semiannual period, or six hundred dollars in any year.

Sec. 23. That section 66-619, Revised Statutes Supplement, 1984, be amended to read as follows:

66-619. The tax imposed by section 66-605 shall be computed by each special fuel dealer by multiplying the tax rate per gallon, as provided by section 66-605, by the number of gallons of special fuel delivered or placed by him or her into the supply tank or tanks of a motor vehicle or a special fuel storage facility designed or equipped to fuel motor vehicles for which an exemption certificate has not been obtained.

Sec. 24. (1) A special fuel user permitholder who purchases tax-paid special fuel from a licensed special fuel dealer within this state may obtain a credit for the amount of special fuel tax paid on such purchases if the amount of the tax paid exceeds twenty dollars. The

total amount refunded shall not exceed the amount paid for the permit.

(2) Any special fuel user permitholder who has obtained a permit for a vehicle that is used for limited mileage during the year may obtain a refund of a portion of the fee paid for such permit. For a vehicle weighing less than eight thousand pounds that is used less than five thousand miles, a refund of two-thirds of the fee may be obtained. If the vehicle weighs less than eight thousand pounds and is used five thousand miles or more, but less than ten thousand miles, a refund of one-third of the fee may be obtained. For a vehicle weighing eight thousand pounds or more that is used less than one thousand five hundred miles, a refund of two-thirds of the fee may be obtained. If the vehicle weighs eight thousand pounds or more and is used one thousand five hundred miles or more, but less than three thousand miles, a refund of one-third of the fee may be obtained.

(3) If a refund is claimed under both subsections (1) and (2) of this section, the total amount of the refund shall not exceed the fee paid.

(4) The amount of the refund allowed pursuant to this section shall be a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967.

(5) The special fuel user permitholder shall retain, for three years, odometer readings for the vehicle or the invoices showing the amount of fuel purchased, the identity of the purchaser, the vehicle into which the fuels were delivered, and the identity of the seller if a refund is claimed under this section.

Sec. 25. (1) All special fuel dealers licensed under section 66-611 shall jointly furnish a cash bond to the state to secure the payment of all special fuel taxes.

(2) All importing dealers licensed under section 3-149 or 66-403 shall jointly furnish a cash bond to the state to secure the payment of all fuel taxes other than special fuel.

(3) The cash bonds shall be held by the State Treasurer in a special fuel dealers trust fund, which is hereby created, and an importing dealers trust fund, which is hereby created, for the benefit of such dealers. No dealer shall have any claim or rights against the funds as a separate person.

(4) All funds available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269 and may be pooled with other funds for the purposes of section 72-1267.

Sec. 26. (1) The contribution for the cash bonds required in section 25 of this act shall be collected by the Tax Commissioner each tax period with the tax return for all such periods beginning on and after September 30, 1985. The amount due shall be deemed to be tax for the purpose of collection or refund.

(2) The amount collected each tax period from the special fuel dealers shall be the portion of the commission allowed which equals one-fourth of one per cent of the total tax due.

(3) The amount collected each period from the importing dealers shall be the portion of the commission allowed which equals one-fourth of one per cent of the total tax due.

(4) The contributions from the special fuel dealers shall continue to be collected until the amount in their trust fund, including interest earned, is equal to one half of one per cent of the total special fuel tax collected during the preceding year. The contributions shall resume whenever the amount is less than one-fourth of one per cent of the special fuel tax collected during the preceding year.

(5) The contributions from the importing dealers shall continue to be collected until the amount in their trust fund, including interest earned, is equal to one half of one per cent of the total fuel tax collected, other than special fuel tax, during the preceding year. The contributions shall resume whenever the amount is less than one-fourth of one per cent of the fuel taxes, other than special fuel taxes, during the preceding year.

(6) The Tax Commissioner shall notify the appropriate dealers whenever it is necessary for the contributions for either fund to resume. The contributions shall begin with the first tax return that is due at least thirty days after notice is provided by the Tax Commissioner.

Sec. 27. (1) Money in the trust funds created pursuant to section 25 of this act shall be used solely for the purpose of preventing a loss to the state for fuel taxes that are not paid.

(2) Whenever the Tax Commissioner determines that fuel tax has been delinquent for ninety days, he or she shall certify the delinquent amount of tax and the interest due thereon to the State Treasurer. The certification shall include the specific fund into which the tax would have been deposited if received and which cash bond is liable for the tax and interest.

(3) Upon receipt of the certification, the State Treasurer shall transfer the amount to the fund identified.

(4) Such transfer shall not affect the liability of the dealer to the state.

Sec. 28. (1) A refund of the contributions made pursuant to section 26 of this act shall be made only when there is a refund of the tax on which the contribution is calculated or when there was an error in the calculation.

(2) If the cash bonds are abolished, the money in the trust funds shall be returned to the dealers who are then licensed by increasing the shrinkage or commission by

the amount specified for the contributions. The reduction in collections because of the additional amount allowed to the dealers shall be replaced by a transfer from the cash bonds to the appropriate highway fund.

Sec. 29. (1) The Tax Commissioner shall revoke all the fuel licenses of any person whose failure to pay a fuel tax has caused a transfer from the cash bonds.

(2) No fuel licenses shall be reinstated until the person has paid the total amount of tax and interest due. The amount previously transferred from the cash bonds shall be replaced, and the remainder of the payment shall be deposited in the same manner as other delinquent collections.

(3) The Tax Commissioner shall continue to utilize all collection tools available for the collection of delinquent taxes.

Sec. 30. (1) The Tax Commissioner shall appoint a committee to oversee the operation of the trust funds created in section 25 of this act. The committee shall consist of five members. Two of the members shall be special fuel dealers and two members shall be importing dealers.

(2) The committee shall have access to information concerning any transfers occurring from the trust funds, the collection efforts of the department to collect from the person owing the tax, and the management of the trust funds.

(3) Members of the committee shall be considered employees of the Department of Revenue solely for the purpose of the disclosure of confidential information and the imposition of penalties for the unauthorized disclosure of such information.

(4) The committee may receive confidential information only for the purpose of determining the effectiveness of the Department of Revenue in collecting the amounts transferred from the cash bonds collected pursuant to section 26 of this act.

Sec. 31. That section 66-624, Revised Statutes Supplement, 1984, be amended to read as follows:

66-624. (1) If any special fuel dealer fails, neglects, or refuses to file a special fuel tax return when due, the motor fuel tax administrator shall, on the basis of information available to him or her, determine the tax liability of the special fuel dealer for the period during which no return was filed. He or she shall add to the tax, to be determined by the motor fuel tax administrator, the penalty and interest provided in section 66-621.

(2) If any person other than a special fuel user obtains and uses special fuel without having paid the tax on such fuel as provided in Chapter 66, article 6, the motor fuel tax administrator shall, on the basis of information available to him or her, determine the tax liability of such person. If any person who is not a

special fuel dealer or a special fuel user fueling ~~their~~ his or her own vehicle, fuels a vehicle with special fuel, the motor fuel tax administrator shall on the basis of information available to him or her determine the tax that would have been due on such transaction and assess the tax against such person. The motor fuel tax administrator shall add to the tax liability, as determined pursuant to this subsection, a penalty of one thousand dollars and interest provided in section 45-104.01 as such rate may from time to time be adjusted by the Legislature, except that such penalty may be waived or reduced at the discretion of the motor fuel tax administrator. An assessment made by the administrator, pursuant to this section or to section 66-623, shall be presumed to be correct, and in any case where the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that it is erroneous or excessive, as the case may be.

(3) Any corporate officer or employee with the authority to decide whether the corporation will pay the taxes, file the returns, or perform any other act required of corporations under Chapter 66, article 6, shall be personally liable for the payment of such taxes or any penalties in the event of willful failure on his or her part to have the corporation perform such act.

Sec. 32. That section 66-631, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-631. For the purpose of enforcing the provisions of sections 66-601 to 66-649 66-649 and sections 18 and 24 to 30 of this act, it shall be prima facie presumed that all special fuel received by a special fuel dealer into storage and dispensing equipment designed to fuel motor vehicles is to be transferred or delivered by the special fuel dealer into the fuel supply tanks of motor vehicles or into special fuel storage facilities that are designed or equipped to fuel motor vehicles.

Sec. 33. That section 66-1047, Revised Statutes Supplement, 1984, be amended to read as follows:

66-1047. An individual shall be allowed, as a credit to be applied against such individual's income tax liability, a credit for the installation within this state of a renewable energy source system. The credit shall be available for a functional renewable energy source system installed between January 1, 1982, and December 31, 1986 1985. The amount of the credit shall be determined by the date the renewable energy source system is installed:

(1) For a system installed on or after January 1, 1982, and prior to January 1, 1983, the amount of the credit shall be equal to thirty per cent of the cost of the system or three thousand dollars, whichever is less;

(2) For a system installed on or after January 1, 1983, and prior to January 1, 1984, the amount of the

credit shall be equal to twenty-five per cent of the cost of the system or two thousand five hundred dollars, whichever is less;

(3) For a system installed on or after January 1, 1984, and prior to January 1, 1985, the amount of the credit shall be equal to twenty per cent of the cost of the system or two thousand dollars, whichever is less; and

(4) For a system installed on or after January 1, 1985, and prior to January 1, 1986, the amount of the credit shall be equal to fifteen per cent of the cost of the system or one thousand five hundred dollars, whichever is less; and

(5) For a system installed on or after January 1, 1986, and prior to January 1, 1987, the amount of the credit shall be equal to ten per cent of the cost of the system or one thousand dollars, whichever is less.

Any credit balance may be carried over and applied against the individual's income tax liability for the two years immediately succeeding the year in which the credit was earned. The credit allowed by this section shall not exceed the individual's income tax liability for the taxable year.

Sec. 34. That section 66-1048, Revised Statutes Supplement, 1984, be amended to read as follows:

66-1048. A corporation, partnership, subchapter S corporation, or fiduciary shall be allowed a credit for installation of a renewable energy source system within this state. The credit allowed to a corporation or a fiduciary that does not distribute its income currently shall be applied against such entity's income tax liability. A credit allowed to a partnership, subchapter S corporation, or fiduciary that distributes its income currently shall be allowed to the partners, shareholders, or beneficiaries to the same extent as such partner, shareholder, or beneficiary shares in the income of the entity if such distribution does not increase the total allowable credit for a system, or allow a credit to an individual who could not claim a credit under subsection (6) of section 77-2715. The credit shall be available for a functional renewable energy source system installed between January 1, 1982, and December 31, 1986 1985. Any partnership, subchapter S corporation, or fiduciary which installed a functional renewable energy source system after January 1, 1982, and prior to August 26, 1983, shall be eligible for the credit authorized pursuant to this section. The amount of the credit shall be determined by the date the renewable energy source system is installed:

(1) For a system installed on or after January 1, 1982, and prior to January 1, 1983, the amount of the credit shall be equal to thirty per cent of the cost of the system or six thousand dollars, whichever is less;

(2) For a system installed on or after January 1, 1983, and prior to January 1, 1984, the amount of the

credit shall be equal to twenty-five per cent of the cost of the system or five thousand dollars, whichever is less;

(3) For a system installed on or after January 1, 1984, and prior to January 1, 1985, the amount of the credit shall be equal to twenty per cent of the cost of the system or four thousand dollars, whichever is less; and

(4) For a system installed on or after January 1, 1985, and prior to January 1, 1986, the amount of the credit shall be equal to fifteen per cent of the cost of the system or three thousand dollars, whichever is less; and

~~(5) For a system installed on or after January 1, 1986, and prior to January 1, 1987, the amount of the credit shall be equal to ten per cent of the cost of the system or two thousand dollars, whichever is less.~~

Any credit balance may be carried over and applied against the entity's income tax liability for the two years immediately succeeding the year in which the credit was earned. The credit allowed by this section shall not exceed the entity's income tax liability for the taxable year.

Sec. 35. That section 66-1050, Revised Statutes Supplement, 1984, be amended to read as follows:

66-1050. (1) A builder of a new residential unit in this state constructed prior to January 1, 1986, which incorporates a passive solar energy system shall be allowed, as a credit to be applied against such builder's income tax liability, a credit in an amount determined pursuant to the solar construction credit table created pursuant to section 66-1051.

(2) The amount of the credit allowed by subsection (1) of this section shall not exceed two thousand dollars.

(3) Any credit balance may be carried over and applied against the builder's income tax liability for the two years immediately succeeding the year in which the credit was earned. The credit allowed by this section shall not exceed the builder's income tax liability for the taxable year.

(4) If two or more builders have a proprietary interest in a residential unit, the credit allowable under this section shall be apportioned to each builder on the basis of his or her ownership interest in the residential unit.

Sec. 36. That section 66-1055, Revised Statutes Supplement, 1984, be amended to read as follows:
66-1055. Sections 66-1029 to 66-1055 shall terminate on December 31, ~~1990~~ 1989.

Sec. 37. That section 76-214, Revised Statutes Supplement, 1984, be amended to read as follows:

76-214. Every grantee who has a deed to real estate recorded, which deed was executed after July 21, 1965, shall at the time such deed is presented for recording file with the register of deeds a completed

statement as prescribed by the Tax Commissioner. For all deeds recorded after January 1, 1986, the statement shall contain the social security number or the federal employer identification number of the grantee. This statement may require the recitation of any information contained in the deed, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of the real estate itself, and other factors which may influence the transaction. This statement shall be signed and filed by the grantee or his or her authorized agent. If the grantee fails to furnish such statement, the register of deeds shall not record the deed. The register of deeds shall indicate on the statement the book and page or computer system reference where the deed is recorded and shall immediately forward the statement to the county assessor. The county assessor shall process the statement according to the instructions of the Tax Commissioner and shall, when directed, forward the statement to the Tax Commissioner. This statement and the information contained therein shall be confidential and available to tax officials only.

Sec. 38. That section 77-1342, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1342. There is hereby created a fund to be known as the Tax Commissioner Revolving Fund to which shall be credited all money received by the agency for services performed to county and multicounty assessment districts and under the provisions of sections 77-629, 77-1241.09, and 77-1250, which provisions shall be for the purpose of providing funds to be used to develop appraisal manuals and distribute them to the counties, ~~to defray other incidental expenses of the Ad Valorem Advisory Committee,~~ and to engage competent counsel. The county or multicounty assessment district shall be billed by the Tax Commissioner for services rendered. Reimbursements to the Tax Commissioner shall be credited to the fund and expenditures therefrom shall be made only when such funds are available. The Tax Commissioner shall only bill for the actual amount expended in performing the service.

This fund shall, at the close of each year, be lapsed to the General Fund, except that no part of the fees received under sections 77-629, 77-1241.09, and 77-1250 shall be so lapsed. Any money in the Tax Commissioner Revolving Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to ~~72-1259~~ 72-1269.

Sec. 39. That section 77-2106.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2106.01. When any amount of estate tax, in excess of that legally due, shall have been paid to the State Treasurer, the party making such overpayment or his or her successors or assigns shall be entitled to refund of

such overpayment. All claims for refund on account of the overpayment of estate taxes shall be filed with the Tax Commissioner in accordance with the provisions of Chapter 84, article 3, as amended. Said The claims must be filed with the Tax Commissioner within four years after the date of such overpayment or within one year of a change in the amount of federal estate tax due, whichever is later. If the Tax Commissioner shall have rejected or disallowed any such claim in whole or in part, action in the district courts shall be permitted in accordance with the provisions of Chapter 24, article 3.

Sec. 40. That section 77-2701, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2701. Sections 77-2701 to 77-27,135 and sections 44 and 45 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967. After January 1, 1984, any reference to sections 77-2701 to 77-27,135 or the Nebraska Revenue Act of 1967 shall be construed to include sections 77-2734.01 to 77-2734.15 and any reference which would include sections 77-2734 to 77-2752 shall be construed to include sections 77-2734.01 to 77-2734.15.

Sec. 41. That section 77-2702, Revised Statutes Supplement, 1984, be amended to read as follows:

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

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

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

(3) Contractor or repairperson shall mean any person who performs any repair services upon tangible personal property or who performs or any improvement upon real estate, including leased property, and who, as a necessary and incidental part of performing such services, incorporates tangible personal property belonging to him or her into the property being so repaired or improved. Contractor or repairperson shall be considered to be the consumer of such tangible personal property furnished by him or her and incorporated into the property being so repaired or improved for all the purposes of ~~sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967;

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

(i) The cost of tangible personal property sold. In accordance with such rules and regulations as the Tax Commissioner may prescribe, a deduction may be taken if the retailer has purchased tangible personal property for some

purpose other than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the tangible personal property, and has resold the property prior to making any use of the tangible personal property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the tangible personal property;

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

(iii) The cost of transportation of the tangible personal property prior to its sale to the purchaser; 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~~ the Nebraska Revenue Act of 1967;

(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 when the admission tax is charged under sections 77-2701 to 77-27135 the Nebraska Revenue Act of 1967; and

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

(i) Cash discounts allowed and taken on sales;

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

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

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

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

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

(vii) 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~~ the Nebraska Revenue Act of 1967 if such conditional sale contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration;

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

(6) Occasional sale shall mean:

(a) A sale of tangible personal property 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 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;

(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~~ delivery person's selling price of the tangible personal property in his or her gross receipts; and

(d) The sale of admissions which shall mean the right or privilege to have access to or use a place or location, ~~except admissions~~. When an admission to an activity is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment. Admissions shall not include fees charged by (i) elementary or secondary schools, public or private, or (ii) school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school, public or private, during

the regular school day or at an approved function of any such school;

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

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

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

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

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

(iv) Agricultural chemicals to be 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 77-27,125~~ the Nebraska Revenue Act of 1967; and returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. The term returnable containers means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers;

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

(e) Tangible personal property the sale, purchase, or use of which has been taxed to that taxpayer in another state, territory, or possession of the United

States of America when such other state, territory, or possession grants a reciprocal exclusion or an exemption to similar transactions in this state;

(f) The purchase in this state or the purchase without this state, with title passing in this state, of materials and replacement parts, when used as or when used directly in the repair and maintenance or manufacture of railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, motor vehicles, watercraft, or aircraft engaged as common or contract carriers of persons or property or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers of persons or property. All purchasers seeking to take advantage of the exemption shall apply to the Tax Commissioner for a common or contract carrier exemption. The common or contract carrier exemption certificate shall remain valid for a period of three years from the date of issuance. All persons seeking to continue to take advantage of the common or contract carrier exemption shall apply for a new certificate at the expiration of the prior certificate. All common or contract carrier exemption certificates in effect prior to October 31, 1986, shall remain valid until October 31, 1986. The Tax Commissioner shall notify such exemption certificate holders at least sixty days prior to the expiration date that their certificate will expire and be null and void as of October 31, 1986;

(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~~ when an admission tax is charged under ~~sections 77-2701 to 77-27-135~~ the Nebraska Revenue Act of 1967 and railroad rolling stock interchanged pursuant to the provisions of the Interstate Commerce Act;

(iii) Every person engaged in the business of renting or furnishing for periods of less than thirty days any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, or any other place, except a facility licensed under the provisions of Chapter 71, article 20, in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or 85 in which

rooms are regularly used to house students for a consideration for periods in excess of thirty days, shall be and constitute a retail merchant in respect thereto and the gross income received therefrom shall constitute gross income of a retail merchant received from transactions constituting selling at retail; 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~~ the Nebraska Revenue Act of 1967 to regard any ~~salesperson~~ salespersons, representatives, peddlers, canvassers, or auctioneers and persons conducting auction sales as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, auctioneers, or employers, the Tax Commissioner may, at his or her discretion, treat such agent as the vendor jointly responsible with his or her principal, distributor, supervisor, or employer for the purposes of ~~sections 77-2701 to 77-27-135~~ the Nebraska Revenue Act of 1967;

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

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

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

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

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

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

(f) The renting or furnishing for periods of less than thirty days of any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp,

tourist cabin, or any other place, except a facility licensed under the provisions of Chapter 71, article 20, in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days;

(14) Sale for resale shall mean a sale of tangible personal property to any purchaser who is purchasing such tangible personal property for the purpose of reselling it in the normal course of his or her business, either in the form or condition in which it is purchased or as an attachment to or integral part of other tangible personal property. A sale for resale shall include a sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing such tangible personal property to another person, with rent or lease payments set at a fair market value, or film rentals for use in a place where an admission is charged that is subject to taxation under ~~sections 77-2701 to 77-27-135~~ the Nebraska Revenue Act of 1967, but not if incidental to the renting or leasing of real estate;

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

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

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

(iii) The cost of transportation of the tangible personal property 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 if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

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

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

(vi) The value of a motor vehicle taken by any person in trade as all or 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~~ such 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 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. 42. That section 77-2703, Revised Statutes Supplement, 1984, be amended to read as follows:

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

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

the retailer from the consumer constitutes a debt owed by the retailer to ~~of~~ this state. 7

(b) It is unlawful for any retailer to advertise, ~~or to~~ hold out, or ~~to~~ state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility. 7

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales, rentals, or leases. 7

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax, and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to adopt and promulgate appropriate rules and regulations prescribing a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by ~~the provisions of sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items and shall provide that no tax be collected on sales below a sum of fifteen cents, ~~except~~ PROVIDED, that the Tax Commissioner may authorize computation and collection of the tax uniformly on a straight percentage basis in lieu of brackets in situations involving machine or computer billing. 7

(e) The use of tokens or stamps for the purpose of collecting or ~~of~~ enforcing the collection of the taxes imposed in ~~sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited. 7

(f) For the purpose of the proper administration of the provisions of ~~sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967 and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he or she takes, in good faith, from the purchaser a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it or takes, in good faith, an exemption certificate pursuant to subsection (7) of

section 77-2705. Receipt of a resale certificate or exemption certificate, taken in good faith, shall be conclusive proof for the seller that the sale was made for resale or was exempt. 7

(g) Whenever any retailer shall make delivery of any tangible personal property in this state on or after June 1, 1967, it shall be conclusively presumed that such property was sold at retail on or after June 1, 1967, unless the delivery thereof is made pursuant to a contract executed in writing for a fixed price before June 1, 1967, with at least twenty-five per cent of the total price paid prior to June 1, 1967, and such delivery is made prior to August 31, 1967. 7

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

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

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

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

(iv) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision. 7

(i) If a sales or use tax has been paid on the purchase, storage, use, or other consumption of tangible personal property used in the performance of a construction contract, which contract is with the project owner, is for a fixed price, and has been executed prior to June 1, 1967, and which tangible personal property is incorporated into the project and transferred to the owner of the structure constructed upon the completion of the

contract, the person having paid such sales or use tax shall be entitled to a refund of the amount of taxes so paid. The Tax Commissioner shall by rule and regulation provide the manner and means of applying for such refund and shall require the furnishing of such proof as may reasonably be required to establish the fact that such property was used in the completion of a contract as defined in this subdivision and that any sales or use tax has in fact been paid on such tangible personal property.

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(j) The tax imposed by the provisions of this section on the sales of motor vehicles, trailers, and semitrailers as defined in section 60-301 shall be the liability of the purchaser and the tax shall be collected by the county treasurer at the time the purchaser makes application for the registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, trailer, or semitrailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed hereunder; and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner shall prescribe, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement or who willfully falsifies any such statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motor vehicle, trailer, or semitrailer in this state and does not register it for operation on the highways of this state within twenty days of the purchase thereof, the tax imposed by the provisions of this section shall immediately thereafter be paid by the purchaser to the county treasurer. The county treasurer shall report and remit the tax so collected to the Tax Commissioner at such times as the Tax Commissioner may require by rule and regulation. The county treasurer shall deduct and withhold for the use of the county general fund the collection fee permitted to be deducted by any retailer collecting the sales tax. ~~The~~ ~~7~~ ~~PROVIDED,~~ ~~this~~ collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax. ~~7~~ ~~and~~

(k) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by the provisions of this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by the provisions of this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased, leased, or rented from any retailer ~~or of intellectual or entertainment properties referred to in subdivision (4)(e) of section 77-2702 and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of said the lease or rental prices.~~

(a) Every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer or leased or rented from another person for such purpose is liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability is not extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of ~~sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to subdivision (b) of this subsection is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

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

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

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

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

(e) For the purpose of the proper administration of the ~~provisions of sections 77-2701 to 77-27,135~~ Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that tangible personal property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

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

Sec. 43. That section 77-2704, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2704. (1) There are exempted from the computation of the amount of sales and use taxes imposed by ~~sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967 the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of the following:

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

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

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

(iii) Motor vehicle fuels as defined, taxed, or exempted under the provisions of Chapter 66, article 4, and special fuels as defined, taxed, or exempted for use on the highways under the provisions of Chapter 66, article 6;

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

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

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

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

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

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

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

(h) Tangible personal property which is shipped to a point outside this state, pursuant to the contract of sale, by delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, delivery by the retailer to the United States post office for delivery outside this state, or delivery by the retailer to a customs broker or forwarding agent for

shipment outside this state. This shall include the gross receipts from sales of tangible personal property to a common or contract carrier shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common or contract carrier;

(i) Purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any educational institution established under the provisions of Chapter 79, any private college or university, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives funds under the Urban Health Initiative Program or the Rural Health Initiative Program of the United States Public Health Service, skilled nursing facility, or intermediate care facility one licensed under sections 71-2017 to 71-2029 and organized not for profit, any nonprofit organization providing services primarily for home health care purposes, any licensed child caring agency, or any licensed child placement agency. The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the owner of the organization or institution. The appointment of purchasing agents must be in writing and occur prior to purchasing any tangible personal property incorporated into the construction, improvement, or repair. Any person purchasing, storing, using, or otherwise consuming tangible personal property in the performance of any construction, improvement, or repair by or for any institution enumerated in this subdivision which is licensed upon completion although not licensed at the time of construction or improvement, which tangible personal property is incorporated into a structure and becomes the property of the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the tangible personal property physically incorporated into the construction, improvement, or repair. The Tax Commissioner shall allow a refund to the institution on any contract of construction,

improvement, or repair entered into prior to July 1, 1980, whereby the person purchasing, storing, using, or otherwise consuming tangible personal property has paid the applicable sales and use tax thereon. The refund shall be calculated by multiplying the sales or use tax percentage rate times a sum equal to sixty per cent of the total contract price of such construction, improvement, or repair;

(j) The gross receipts from the sale of tangible personal property when sold through coin-operated vending machines below a sum of fifteen cents;

(k) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane for use in processing, manufacturing, mining, refining, irrigation, farming, building construction, telegraph, telephone, and radio communication, and street and railroad transportation services and for all business, commercial, and industrial uses;

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

(m) Purchases by the state, including educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, or rural or suburban fire protection district, for use in a governmental capacity, or by any irrigation or reclamation district or the irrigation division of any public power and irrigation district. The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the state or the governmental unit. The appointment of purchasing agents must be in writing and occur prior to purchasing any tangible personal property incorporated into the construction, improvement, or repair;

(n) The entire purchase price of a motor vehicle purchased when at least eighty per cent of the funds are with funds substantially contributed by the Veterans' Administration of the United States or the Department of Social Services for a disabled veteran under the provisions of section 1901, Chapter 39, Title 38, United States Code person. If the amount contributed is less than eighty per cent, the exemption shall be based on the portion of the purchase price contributed;

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

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

(q) The gross receipts from the sale, lease, or rental of any tangible personal property to, or the

storage, use, or other consumption of tangible personal property by, associations or societies of Nebraska citizens qualified to receive financial support as provided under sections 2-2801 to ~~2-2813~~ 2-2812;

(r) All items of tangible personal property purchased from institutionally operated stores, canteens, and hobby shops by inmates, residents, or clients of such state institutions. Such exemption shall not apply to the employees of state institutions;

(s) Any organization listed in subdivision (i) of this subsection or any governmental unit listed in subdivision (m) of this subsection, except the state, which enters into a contract of construction, improvement, or repair upon real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to purchasing tangible personal property to be incorporated into the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the tangible personal property physically incorporated into the construction, improvement, or repair; and

~~(t)~~ Manufacturing and processing equipment purchased on or after September 1, 1981, for use directly in manufacturing or processing operations, initially installed in a manufacturing facility of new construction begun on or after July 1, 1981. For purposes of this subdivision, the term new construction shall include (i) a new facility or the physical expansion of an existing facility or (ii) installation to achieve product diversification; and

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

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

(3) The use tax imposed in ~~sections 77-2701 to 77-27135~~ the Nebraska Revenue Act of 1967 shall not apply to:

(a) The use in this state of materials and replacement parts which are acquired outside this state and which are moved into this state for use directly in the repair and maintenance or manufacture of motor vehicles,

watercraft, railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, or aircraft engaged as common or contract carriers of persons or property; and

(b) The storage, use, or consumption of tangible personal property which is acquired outside this state, the sale, lease, or rental or the storage, use, or consumption of which property would be exempt from the sales or use tax were it purchased within this state.

(4) If any person who causes tangible personal property to be brought into this state has already paid a tax in another state in respect to the sale or use of such property in an amount less than the tax imposed by section 77-2703, the provision of this section shall apply, but at a rate measured by the difference only between the rate imposed by section 77-2703 and the rate by which the previous tax on the sale or use was computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed by section 77-2703, then no use tax shall be due in this state on such personal property if such other state, territory, or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

(5) A lease of tangible personal property from a subsidiary to the parent company, from a parent company to a subsidiary, from one subsidiary to another subsidiary of the same parent company, or between brother-sister companies shall not be subject to the sales and use tax imposed by ~~sections 77-2701 to 77-2713~~ the Nebraska Revenue Act of 1967. Such lessor company shall have the same sales and use tax liability on the purchase of property to be leased to the lessee company as the lessee company would have paid if the lessee company had purchased the property directly.

(6) There is exempted from the computation of the amount of sales and use taxes imposed by ~~sections 77-2701 to 77-2713~~ the Nebraska Revenue Act of 1967 the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of railroad rolling stock whether owned by a railroad or by any other person.

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

the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed price contract, the contractor shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars.

Sec. 44. As used in section 45 of this act, unless the context otherwise requires:

(1) Manufacturing and processing equipment shall mean equipment which fabricates, creates, transforms, or reduces tangible personal property to a different state, quality, form, property, or thing. Manufacturing and processing equipment shall not include equipment which is used in the preparation of food for immediate consumption, consumable supplies, real property, or portable equipment, including hand tools;

(2) New construction shall mean a new facility or the physical expansion of an existing facility;

(3) Product diversification shall mean the manufacture or processing of a product or the components of a product which differ in kind or type from the products presently being manufactured, processed, or sold. Product diversification shall not include (a) the replacement of one product with another product, (b) the updating of an existing product such as a model change or regular design change, (c) a change in the size of the product, (d) a change in the way a product is being made, or (e) a change in the materials used to make the product.

Sec. 45. (1) An application for a refund of Nebraska sales and use taxes paid for manufacturing and processing equipment for use directly in manufacturing or processing operations, initially installed in a manufacturing facility of new construction or installed to achieve product diversification, may, upon purchase and installation of such equipment, be filed with the Tax Commissioner by the owner or lessee of such equipment in such manner and in such form as may be prescribed by the Tax Commissioner. To qualify for such refund, the purchase order for the manufacturing and processing equipment installed in a facility of new construction shall be issued to the seller or renter of the equipment no more than thirty-six months after the new construction is begun. No equipment intended to replace other equipment within the facility shall be eligible for the refund. Manufacturing or processing equipment used to produce both an existing product and a product which qualifies as product diversification shall not be eligible for the refund.

(2) The application for a refund shall contain: (a) Proof of purchase or rental of manufacturing and processing equipment and purchase or rental price; (b) proof that the sales or use tax for which the refund is requested was paid; (c) plans, specifications, and an

explanation for the new construction or for the product diversification; (d) certification that the purchase order for the equipment was issued to the seller or the renter no more than thirty-six months after the beginning of the new construction in which the equipment is to be housed; and (e) any other evidence the Tax Commissioner deems necessary to determine whether the equipment qualifies for the refund.

(3) Such application for refund shall be processed as any other claim under section 77-2708, except that the Tax Commissioner shall approve qualifying claims filed under this section within sixty days after the refund claim for qualifying equipment is completed under subsection (2) of this section.

Sec. 46. That section 77-2708, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2708. (1)(a) The sales and use taxes imposed by the Nebraska Revenue Act of 1967 ~~the provisions of sections 77-2701 to 77-27,135~~ shall be due and payable to the Tax Commissioner monthly on or before the twenty-fifth day of the month next succeeding each monthly period, unless otherwise provided pursuant to the ~~provisions of sections 77-2701 to 77-27,135~~ Nebraska Revenue Act of 1967.

(b)(i) On or before the twenty-fifth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the ~~provisions of sections 77-2701 to 77-27,135~~ Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner may by rule and regulation permit or require quarterly, ~~semiannual~~, or annual reports and tax payments from sellers, retailers, or purchasers as the case may be who have small tax liabilities, but no such reports or payments may be permitted or required when the tax liability exceeds ~~three hundred sixty~~ dollars in any quarter, ~~one hundred twenty~~ dollars in any ~~semiannual~~ period, or ~~two hundred forty~~ or nine hundred dollars in any year.

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax, except that a combined sales tax return may be filed for all licensed locations which are subject to common ownership.

For the purposes of this subdivision, common ownership shall mean the same person or persons own eighty per cent or more of each licensed location. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person who has purchased tangible personal property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

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

(iv) A taxpayer who keeps his or her regular books and records on a cash basis, ~~or on~~ an accrual basis, or ~~on~~ any generally recognized accounting basis which correctly reflects the operation of the business may file the sales and use tax returns required by ~~sections 77-2701 to 77-27135~~ the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) The taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date.

Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty of forfeiture of the collection fee allowed pursuant to subdivision (d) of this subsection or five dollars, whichever is greater.

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

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, ~~or~~ has been erroneously or illegally collected or computed, or is subject to section 45 of this act, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under ~~the provisions of sections 77-2701 to 77-27135~~ the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, assignee, executor, or administrator within three years from the required filing date following the close of the period for which the overpayment was made, within six months after any determination becomes final under ~~the provisions of~~ section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires the later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

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

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

prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to ~~the provisions of sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as provided in section 77-27,127.

(g) Upon the allowance of a credit or refund of any sum erroneously or illegally assessed or collected, of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability or a refund under section 45 of this act, no interest shall be allowed when such excess is refunded or credited.

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

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

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

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

(l) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to ~~sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967 on: (i) Sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes. If such accounts are thereafter collected by the retailer, contractor, or repairperson, a tax shall be paid upon the

amount so collected; or (ii) the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

Sec. 47. That section 77-2709, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

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

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

(4) If any part of a deficiency for which a deficiency determination is made is the result of fraud or an intent to evade ~~sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967 or authorized rules and regulations, a penalty of twenty-five per cent of the amount of the determination or fifty dollars, whichever is

greater, shall be added thereto.

(5)(a) Promptly after making his or her determination, the Tax Commissioner shall give to the person written notice of his or her determination. 7

(b) The notice may be served personally or by mail, and if by mail the notice shall be addressed to the person at his or her address as it appears in the records of the Tax Commissioner. In case of service by mail of any notice required by the provisions of sections 77-2701 to 77-27-135 the Nebraska Revenue Act of 1967, the service is complete at the time of deposit in the United States post office. 7 and

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

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

(6) When a business is discontinued, a determination may be made at any time thereafter within the periods specified herein as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in sections 77-2701 to 77-27-135 the Nebraska Revenue Act of 1967.

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

(8) If a petition for redetermination is filed within the thirty-day period, the Tax Commissioner shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an

oral hearing and shall give him or her ten days' notice of the time and place of the hearing. The Tax Commissioner may continue the hearing from time to time as may be necessary.

(9) The Tax Commissioner may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Commissioner at or before the hearing, upon which assertion the petitioner shall be entitled to a thirty-day continuance of the hearing to allow him or her to obtain and produce further evidence applicable to the items upon which the increase is based.

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

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

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

Sec. 48. That section 77-2712, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2712. (1)(a) If any person liable to pay any sales or use tax neglects or refuses to pay the same after demand, that amount, including interest and penalty, 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. Unless another date is specifically provided by law, such lien shall arise from the time of filing for record and shall remain in effect for five years from the time of filing for record or until such amounts have been paid or a judgment against such person arising out of such liability is satisfied or becomes unenforceable by reason of lapse of time.

(b) If any sales or use tax including any interest and penalty imposed by ~~sections 77-2701 to 77-27-135~~ the Nebraska Revenue Act of 1967 is not paid when due the Tax Commissioner may, within three years after the tax becomes due, file for record, with the clerk of the county in which personal property belonging to the taxpayer is situated and in the office of the register of deeds of any county in which real property belonging to the taxpayer is situated, a notice of lien specifying the year and the amount of tax, interest, and penalty due. Such notice shall contain the name and last-known address of the taxpayer, an identification number, and a statement to the

effect that the Tax Commissioner has complied with all provisions of ~~sections 77-2701 to 77-2713~~ the Nebraska Revenue Act of 1967 in the determination of the amount required to be paid. From the time of filing for record, the amount set forth in such notice shall constitute a lien upon all real or personal property and rights to real or personal property then owned by the taxpayer in the county, and upon all real or personal property and rights to real or personal property acquired by him or her thereafter and before the lien expires. The fee for filing and indexing each notice of lien with the clerk of the county or with the office of the register of deeds shall be one dollar.

(c) A lien imposed pursuant to this subsection shall be valid against any subsequent creditor when notice of such lien and the amount due has been filed by the Tax Commissioner in 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 provided in this subsection, 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 tax lien in writing, in which case the lien of any indebtedness thereafter created under such mortgage or secured transaction shall be junior to the lien provided for in this subsection.

(d) The lien may, within five years from the date of filing for record, be extended by filing for record a new notice. From the time of such filing, the lien shall be extended for five years, unless fully released or otherwise discharged. The fee for filing and indexing each new notice with the clerk of the county or with the office of the register of deeds shall be one dollar.

(e) When a notice of such lien is filed, the appropriate county official shall enter the same in an alphabetical state tax lien index, showing on one line the name and residence of the taxpayer named in such notice, the Tax Commissioner's serial number of such notice, the date and hour of filing, and the amount due. The fee for filing and indexing each notice of lien with the clerk of the county or with the office of register of deeds shall be one dollar. All such notices shall be retained in numerical order in a file designated state tax lien notices, except that, in offices filing by the roll form of microfilm pursuant to section 23-1517.01, the original notices need not be retained.

(f) When a certificate of discharge of any tax lien issued by the Tax Commissioner is filed in the office where the notice of lien is filed, the appropriate county official shall enter the same with the date of filing in the state tax lien index on the line where notice of the lien so discharged is entered, and shall file the

certificate of discharge with the notice of lien. The fee for filing and indexing each certificate of discharge with the clerk of the county or the register of deeds shall be one dollar.

(g) The register of deeds and the clerk of each county shall bill the Tax Commissioner on a quarterly basis for fees for documents filed by him or her for the Tax Commissioner.

(h) The Tax Commissioner may at the request of the person involved at any time release all or any portion of the property subject to any lien provided for in sections 77-2701 to 77-27,135 the Nebraska Revenue Act of 1967 from the lien or subordinate the lien to other liens and encumbrances if he or she determines that the amount, interest, and penalties have been paid or are secured sufficiently by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest, and penalties. The fee for filing and indexing each certificate of release with the clerk of the county or with the register of deeds shall be one dollar.

(i) A certificate by the Tax Commissioner to the effect that any property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, shall be conclusive evidence that the property has been released, or that the lien has been subordinated as provided in the certificate.

(2)(a) At any time within three years after any amount of sales or use tax to be collected under the provisions of sections 77-2701 to 77-27,135 the Nebraska Revenue Act of 1967 becomes due and payable or within five years after the last filing for record under subsection (1) of this section, the Tax Commissioner may bring an action in the courts of this state, or any other state, or of the United States, in the name of the people of the State of Nebraska, to collect the amount delinquent together with penalties and interest.

(b) The Attorney General shall prosecute the action, and the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

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

(d) In the action a certificate by the Tax Commissioner showing the delinquency shall be prima facie evidence of the determination of such tax or the amount of such tax, the delinquency of the amounts set forth, and of the compliance by the Tax Commissioner with all the provisions of sections 77-2701 to 77-27,135 the Nebraska Revenue Act of 1967 in relation to the computation and determination of the amounts.

(e)(i) The sales and use tax amounts required to

be paid by any person under the provisions of sections 77-2701 to 77-27,135 the Nebraska Revenue Act of 1967 together with interest and penalties shall be satisfied first in any of the following cases: Whenever the person is insolvent; whenever the person makes a voluntary assignment of his or her assets; whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased; or whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under the Nebraska Revenue Act of 1967 sections 77-2701 to 77-27,135 are levied upon by process of law; and

(ii) The state sales tax and the use tax shall be collected by the retailer, as agent for the State of Nebraska, on any transaction as set forth in section 77-2703, which taxes shall constitute a trust fund in the hands of the retailer and shall be owned by the state as of the time they are owing to the retailer.

(3)(a) In addition to all other remedies or actions provided by sections 77-2701 to 77-27,135 the Nebraska Revenue Act of 1967, it shall be lawful for the Tax Commissioner after making demand for payment to collect any delinquent sales and use taxes, together with interest, penalties, and additions to such tax, by distraint and sale of the personal property of the taxpayer.

(b) In case of failure to pay taxes or deficiencies as provided, the Tax Commissioner may authorize a sheriff, constable, or duly authorized employee of the Department of Revenue to levy upon, seize, and sell such personal property belonging to the taxpayer as is necessary to satisfy the liability, except exempt property, for the payment of the amount due. As used in this section, exempt property shall mean such property as is exempt from execution under the laws of this state.

(c) When a warrant is issued by the Tax Commissioner for the collection of any sales or use tax, interest, penalty, or addition to such tax imposed by the provisions of sections 77-2701 to 77-27,135; the Nebraska Revenue Act of 1967 or for the enforcement of any sales or use tax lien authorized by sections 77-2701 to 77-27,135 such act, it shall have the same force and effect as a levy and sale pursuant to a writ of execution. Such warrant may be levied and sale made pursuant to it in the same manner with the same force and effect as a levy and sale pursuant to a writ of execution. The Tax Commissioner shall pay the levying sheriff or constable the same fees, commissions, and expenses pursuant to such warrant as are provided by law for similar services pursuant to a writ of execution, except that fees for publication in a newspaper shall be subject to approval by the Tax Commissioner rather than by the court. Such fees, commissions, and expenses shall be an obligation of the taxpayer and may be collected from the

taxpayer by virtue of the warrant. Any such warrant shall show the name and last-known address of the taxpayer, the year for which such tax, interest, penalty, or addition to such tax is due and the amount thereof, and the fact that the Tax Commissioner has complied with all provisions of the Nebraska Revenue Act of 1967 sections 77-2701 to 77-27-135 in the determination of the amount required to be paid, and that the tax, interest, penalty, or addition to such tax is due and payable according to law.

(d) Notice of the sale and the time and place thereof shall be given to the delinquent taxpayer and to any other person with an interest in the property who has filed for record in the county in which such property is situated, in writing at least twenty days before the date set for the sale in the following manner: The notice shall be sent by certified mail, return receipt requested, to the taxpayer and to any other person with such interest at his or her last-known residence or place of business in this state. The notice shall also be published for at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county twenty days prior to the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent taxpayer, and the further statement that unless the amount due, including interest, penalties, and costs, is paid on or before the time fixed in the notice for the sale, or unless such security as may be determined by the Tax Commissioner is placed with the Tax Commissioner or his or her duly authorized representative on or before such time, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(e) At the sale the Tax Commissioner or his or her duly authorized representative shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property. The bill of sale shall vest the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized shall remain in the custody and control of the Tax Commissioner or his or her duly authorized representative until offered for sale again in accordance with this section or redeemed by the taxpayer.

(f) Whenever any property which is seized and sold under the provisions of this subsection is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the sheriff, constable, or duly authorized employee of the Department of Revenue may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property

liable to seizure of the taxpayer against whom such claim exists, until the amount due from such taxpayer, together with all expenses, is fully paid.

(g) If upon the sale the money received exceeds the total of all amounts, including interest, penalties, and costs, due the state and if there is no other interest in or lien upon such proceeds, the Tax Commissioner shall return the excess to the person liable for the amounts and obtain his or her receipt. If any person having an interest in or lien upon the property files with the Tax Commissioner prior to the sale notice of his or her interest or lien, the Tax Commissioner shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Tax Commissioner shall deposit the excess money with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount, or of his or her heirs, successors, or assigns. No interest earned, if any, will become the property of the person liable for the amount.

(h) All persons and officers of companies or corporations shall, on demand of a sheriff, constable, or duly authorized employee of the Department of Revenue about to distrain, or having distrained any property or rights of property, exhibit all books containing evidence or statements relating to the property or rights of property liable to distraint for the tax due.

(i) The distraint provisions of this section shall not be deemed exclusive, but shall be in addition to any and all other existing remedies provided by law for the enforcement of the sales and use tax provisions of ~~sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967.

(4) No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state to enjoin the collection under the provisions of sections 77-2701 to 77-27,135 the Nebraska Revenue Act of 1967 of any tax or any amount of tax required to be collected.

Sec. 49. That section 77-2715, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2715. (1) A tax is hereby imposed for each taxable year on the entire income of every resident individual of this state and on the income of every nonresident individual of this state which is derived from sources within this state. The tax shall be a flat percentage of, for each resident individual, the taxpayer's adjusted federal income tax liability for the taxable year and, for each nonresident individual, the taxpayer's adjusted federal income tax liability for the taxable year which is attributable to income derived from sources within this state.

The taxpayer's adjusted federal income tax

liability shall be the amount of federal income tax, as determined under Subtitle A, Chapter I, subchapter A, Parts I, V, and VI, and subchapter D, Part I of the Internal Revenue Code, for which the taxpayer would have been liable if such taxpayer had paid federal income tax based on federal taxable income as adjusted by the modifications provided in section 77-2716 without any allowance for credits against such tax permitted under the Internal Revenue Code.

The adjusted federal income tax liability of each nonresident individual taxpayer which is attributable to income derived from sources within this state shall be determined by multiplying his or her adjusted federal income tax liability by a fraction, the numerator of which is his or her taxable income derived from sources within this state as determined by section 77-2733 and the denominator of which is his or her total federal taxable income, after first subtracting from each the amounts provided in subsection (1) of section 77-2716. If this determination attributes more or less federal income tax than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for or the Tax Commissioner may require the employment of any other method to attribute an amount of federal income tax which is reasonable and equitable in the circumstances.

(2)(a) A resident of this state shall mean an individual who is domiciled in Nebraska or who maintains a permanent place of abode in this state and spends in the aggregate more than six months of the taxable year in this state; and

(b) A nonresident shall mean an individual who is not a resident of this state.

(3) There shall be allowed to qualified resident individuals as a credit against the tax imposed by sections 77-2714 to 77-27,135 a credit ~~for the elderly~~ equal to fifty per cent of the federal credit allowed under section 37 of the Internal Revenue Code.

(4) ~~Subject to termination under section 66-1055, there~~ There shall be allowed to individuals as a credit against the tax imposed by sections 77-2714 to 77-27,135 a credit for renewable energy source systems as provided under section 66-1047. The provisions of this subsection shall terminate on January 1, 1986.

(5) There shall be allowed to individuals carrying on business as a sole proprietorship or as a partnership or having an election in effect under subchapter S of the Internal Revenue Code as a credit against the tax imposed by sections 77-2714 to 77-27,135 a credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner of a reporting business partnership or shareholder of a business firm with an election in effect under subchapter S of the Internal

Revenue Code shall report the credit in the same manner and proportion as the partner reports the partnership income or the shareholder reports the subchapter S corporation income.

Sec. 50. That section 77-2716, Revised Statutes Supplement, 1984, 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 corporations subject to the tax under section 77-2734.02, 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 corporation 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 corporation's average investment in exempt securities by the corporation's average total assets and multiplying such ratio by the corporation'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 corporation 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 corporation from year to year. The Tax Commissioner may require a corporation to use the alternative amounts in order to maintain consistency or may require the corporation to show that the amounts used do not materially differ from the tax basis.

(7) There shall be subtracted from federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(8) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (8)(b) of this section shall be subtracted from the amount of federal taxable income used in subdivision (8)(a) of this section. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

Sec. 51. That section 77-2717, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2717. (1) The tax imposed on, and the computation of the tax for, individuals shall apply to the tax liability of all estates and trusts except those trusts taxed as a corporation under the Internal Revenue Code.

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal

Revenue Code, a Nebraska fiduciary return shall be filed. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income.

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

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

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

Sec. 52. That section 77-2727, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2727. (1) A partnership as such shall not be

subject to the income tax imposed by the provisions of sections 77-2701 to 77-27,135 Nebraska Revenue Act of 1967. Persons or their authorized representatives carrying on business as partners shall be liable for the income tax imposed by the provisions of sections 77-2701 to 77-27,135 Nebraska Revenue Act of 1967 only in their separate or individual capacities.

(2) The partners of such partnership, who are residents of this state, or corporations, shall include in their incomes their proportionate share of such partnership's income.

(3) If any partner of such partnership is a nonresident individual during any part of the partnership's reporting year, he or she shall file a Nebraska income tax return which shall include in Nebraska adjusted gross income that portion of the partnership's Nebraska income, as determined under the provisions of sections 77-2728 and 77-2729, allocable to his or her interest in the partnership and shall execute and forward to the partnership, on or before the original due date of the Nebraska partnership return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or attributable to sources in this state, and such agreement shall be attached to the partnership's Nebraska return for such reporting year.

(4) In the absence of the nonresident individual partner's executed agreement being attached to the Nebraska partnership return, the partnership shall remit a portion of such partner's income which was derived from or attributable to Nebraska sources with its Nebraska return for the reporting year. The amount of remittance, in such instance, shall be ten per cent of the nonresident individual partner's share of the partnership income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the partner.

(5) The Tax Commissioner may allow require a nonresident individual partner to not file a Nebraska income tax return if even though the nonresident individual partner's only source of Nebraska income was his or her share of the partnership's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the amount of remittance by the partnership has remitted the amount required by subsection (4) of this section on behalf of such nonresident individual partner. The amount remitted shall be retained in satisfaction of shall be allowed as a credit against the Nebraska income tax liability of the nonresident individual partner.

Sec. 53. That section 77-2730, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2730. (1) A resident individual and a resident estate or trust shall be allowed a credit against the income tax otherwise due for the amount of any income tax imposed on him or her for each the taxable year commencing on or after January 1, 1983, by another state of the United States or a political subdivision thereof or the District of Columbia on income derived from sources therein and which is also subject to income tax under the provisions of sections 77-2714 to 77-27,124.

(2) The credit provided under the provisions of sections 77-2714 to 77-27,135 shall not exceed the proportion of the income tax otherwise due under the provisions of sections 77-2714 to 77-27,135 that the amount of the taxpayer's adjusted gross income or total income derived from sources in the other taxing jurisdiction bears to federal adjusted gross income or total federal income.

(3) For purposes of subsection (1) of this section, a resident individual, estate, or trust shall be deemed to have paid a portion of the income tax imposed by another state, a political subdivision thereof, or the District of Columbia on the income of any partnership, trust, estate, or corporation when such resident individual, estate, or trust is a partner, beneficiary, or shareholder and (a) the income taxed is included in the federal taxable income of the resident individual, estate, or trust, (b) any corporation has made an election not to be taxed under subchapter S of the Internal Revenue Code for the taxable year, and (c) the taxation of such partnership, trust, estate, or corporation by the other state is inconsistent with the taxation of such entity under the Internal Revenue Code. The amount of income tax deemed paid by the resident individual, estate, or trust shall be the same percentage of the total tax paid by the entity as the income included in federal taxable income of the resident is to the total taxable income of the entity as computed for the other state.

Sec. 54. That section 77-2734.01, Revised Statutes Supplement, 1984, be amended to read as follows:

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

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

(3) The shareholder shall execute and forward to the corporation before the filing of the corporation's

return an agreement which states he or she will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's Nebraska return for such taxable year.

(4) In the absence of the nonresident shareholder's executed agreement being attached to the Nebraska small business corporate return, the corporation shall remit with the return an amount equal to ten fifty per cent of the rate imposed on individuals under section 77-2715 multiplied by the nonresident shareholder's share of the corporation's income which was derived from or attributable to this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the shareholder.

(5) The Tax Commissioner may allow a nonresident individual shareholder to not file a Nebraska income tax return if the nonresident individual shareholder's only source of Nebraska income was his or her share of the small business corporation's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the small business corporation has remitted the amount required by subsection (4) of this section on behalf of such nonresident individual shareholder. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder.

Sec. 55. That section 77-2734.03, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2734.03. (1) Any (a) corporation subject to tax under section 44-1213, 77-908, 77-909, or 81-523, (b) electric cooperative organized under Chapter 70, article 14, or (c) credit union shall be credited, in the computation of the tax due under the provisions of the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as taxes in lieu of intangible tax.

(2) There shall be allowed to corporate taxpayers a credit for nonhighway use motor vehicle fuels as provided in section 66-452.

(3) There shall be allowed to corporate taxpayers a renewable energy source systems credit or a builder's credit as provided in sections 66-1048 and 66-1050.

(4) There shall be allowed to corporate taxpayers a tax credit for contributions to community betterment programs as provided in the Community Development Assistance Act.

Sec. 56. That section 77-2734.10, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2734.10. The factors computed pursuant to sections 77-2734.05 to 77-2734.15 shall be adjusted in the following situations:

(1) The sales factor shall include the income from intangibles such as interest, royalties, or dividends and the net income from gains on the sale of intangibles;

(2) Except as provided in subdivision (1) of this section, the factors shall not include in the denominator any amount that cannot be assigned to a numerator because of the inability to reasonably identify the location of an income-producing activity;

(3) The factors shall not include any amount that was eliminated as an intercompany transaction; and

(4) The factors shall not include any property, payroll, or sales that are a part of the production of income that is not subject to apportionment;

(5) The property factor shall include the intangible drilling costs incurred on property that is owned or rented and used during the tax period; and

(6) The property factor of a corporation or unitary business engaged in the exploration and extraction of natural resources shall include undeveloped mineral leases and royalty payments on producing leases, except that those mineral leases determined not suitable for production shall not be included in the property factor.

Sec. 57. That section 77-2734.12, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2734.12. (1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the ~~taxpayer's~~ real and tangible personal property owned or rented and used during the tax period.

(2) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer, ~~less any annual rental rate received by the taxpayer from subrentals.~~

(3) The average value of property shall be determined by averaging the values at the beginning and end of the tax period, but the Tax Commissioner may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the ~~taxpayer's~~ property.

Sec. 58. That section 77-2734.14, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2734.14. (1) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(2) Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a

purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (i) the purchaser is the United States government or (ii) the taxpayer is not taxable in the state of the purchaser.

(3) Sales, other than sales of tangible personal property, are in this state; if:

(a) The income-producing activity is performed in this state; or

(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

Sec. 59. That section 77-2734.15, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2734.15. (1) If the apportionment provisions contained in sections 77-2734.01 to 77-2734.14 do not fairly represent the taxable income that is reasonably attributable to the business operations conducted within this state, the taxpayer may petition for or the Tax Commissioner may require, in respect to all or any part of the taxpayer's federal taxable income, if reasonable:

(a) The inclusion of one or more additional factors which will fairly represent the taxpayer's taxable income in this state;

(b) The exclusion of any one or more factors;

(c) Separate accounting; or

(d) The employment of any other method to effectuate an equitable apportionment of the taxpayer's income.

(2) Subsection (1) of this section is intended to apply only in unique and nonrecurring factual situations which would otherwise produce incongruous results under the normal apportionment formula.

(3) The Tax Commissioner may adopt and promulgate rules and regulations for appropriate procedures for the computation of the property, payroll, and sales factors of the apportionment formula for certain industries when necessary to retain uniformity with the taxation methods of other states or when the characteristics of the industry are such that the normal computation methods are not appropriate. Such industries shall include, but are not limited to, transportation, broadcast communications, and insurance.

(4) If the Tax Commissioner fails to mail a notice of final action on any petition under the provisions of this section within thirty days after the filing of such petition, the taxpayer may, prior to notice of action on the petition, consider the petition denied.

Sec. 60. That section 77-2769, Revised Statutes

Supplement, 1984, 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 the estimated tax for the taxable year, in such form as the Tax Commissioner may prescribe, except that (a) no payment of estimated tax is required by an individual if the estimated tax can reasonably be expected to be less than three hundred dollars and (b) no payment of estimated tax 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 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 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 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) The 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.

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

(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.

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

77-2772. The Tax Commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income returns, or portions thereof as filed with the Internal Revenue Service, and determinations. The Tax Commissioner may require by regulation or notice, the making of such returns, rendering of such statements, or keeping of such records, as the Tax Commissioner may deem sufficient to show whether or not there is liability for tax or for the collection of tax.

Sec. 62. That section 77-2781, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2781. In any proceeding before the Tax Commissioner, the burden of proof shall be on the taxpayer except for the following issues, as to which the burden of proof shall be on the Tax Commissioner:

(1) Whether the taxpayer has been guilty of fraud with attempt to evade tax;

(2) Whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; ~~or~~

(3) Whether the taxpayer is liable for any increase in a deficiency ~~where when~~ such increase is asserted initially after the notice of deficiency was mailed and a protest under ~~the provisions of~~ section 77-2778 filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported under ~~the provisions of~~ section 77-2775, and of which change or correction the Tax Commissioner had no notice at the time he or she mailed the notice of deficiency; or

(4) Whether the taxpayer or petitioner is liable for any penalty imposed under subsection (7) or (8) of section 77-2790.

Sec. 63. That section 77-2786, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2786. (1) Except as otherwise provided in ~~sections 77-2701 to 77-27,135~~ the Nebraska Revenue Act of 1967, a notice of a proposed deficiency assessment shall be mailed to the taxpayer within three years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless a notice of a proposed deficiency assessment shall have been mailed within three years after the return was filed or the period otherwise fixed.

(2) If the taxpayer omits from ~~gross~~ taxable

income an amount properly includable therein which is in excess of twenty-five per cent of the amount of gross taxable income stated in the return or a corporate return omits a properly includable member of the unitary group as defined in section 77-2734.04, a notice of a proposed deficiency assessment may be mailed to the taxpayer within six years after the return was filed. A notice of deficiency based on the omission of a member of a unitary group shall be limited to the increase in the tax caused by including the omitted member. For purposes of this subsection, there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Tax Commissioner of the nature and amount of such item and the manner in which such item would affect the computation of taxable income.

(3) If no return is filed or a false and fraudulent return is filed with intent to evade the income tax imposed by ~~sections 77-2701 to 77-2713~~ the Nebraska Revenue Act of 1967, a notice of deficiency may be mailed to the taxpayer at any time.

(4) If a taxpayer fails to comply with the requirement of section 77-2775 by not reporting a change or correction increasing his or her federal tax liability, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or in not filing an amended return, a notice of deficiency based on a complete examination of the tax liability for the tax years involved may be mailed to the taxpayer at any time.

(5) If the taxpayer shall, pursuant to the provisions of section 77-2775, report a change or correction, or file an amended return increasing his or her federal tax liability, or report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment, if not deemed to have been made upon the filing of the report or amended return, may be made a notice of a deficiency determination based on a redetermination of Nebraska tax liability to reflect the change or correction increasing his or her federal tax liability for the tax years involved may be mailed at any time within two years after such report or amended return was filed.

(6) Where When, before the expiration of the time prescribed in this section for the assessment of a deficiency, both the Tax Commissioner and the taxpayer shall have consented in writing to its assessment after such time, the deficiency may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

An agreement between the taxpayer and the Internal Revenue Service providing for the extension of the period for assessment of federal income taxes shall constitute an agreement with the Tax Commissioner to extend the period for assessment of income taxes under the provisions of sections 77-2701 to 77-27,135 the Nebraska Revenue Act of 1967. A copy of all such agreements and extensions thereof shall be filed with the Tax Commissioner within thirty days after their execution. If the copy of the extension agreement with the Internal Revenue Service is not filed pursuant to this subsection, the notice of deficiency for such taxable year may be mailed at any time within one year of the discovery of the extension by the Tax Commissioner.

(7) For purposes of this section, an income tax return filed before the last day prescribed by sections 77-2701 to 77-27,135 the Nebraska Revenue Act of 1967 for the filing thereof, shall be deemed to be filed on such last day. If a return or withholding tax for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be deemed to be filed on April 15 of such succeeding calendar year.

(8) When it becomes necessary for the Tax Commissioner to apply for a court order under subsection (2) of section 77-27,109 for the production of books, papers, records, or memoranda or the testimony of any person, the period for assessment of a deficiency shall be tolled from the date the Tax Commissioner first applies to the appropriate court for the order until the last date on which the information or testimony contained in the application for the court order is obtained by the Tax Commissioner.

This subsection shall not apply if the court finds that the information is not relevant to the determination of the tax liability, the information was provided prior to the filing of the application, or the application was not filed within the time period otherwise provided in this section for the mailing of a notice of deficiency.

Sec. 64. That section 77-2788, Revised Statutes Supplement, 1984, 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, Nebraska Revenue Act of 1967 including tax withheld by an employer or payor, is not paid on or before the last date prescribed for payment, interest on such amount at the rate specified in section 45-104.01, 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 77-27135 Nebraska Revenue Act of 1967 shall be deemed also to refer to interest imposed by this section on such tax.

(5) Interest shall be imposed under this section 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 the Nebraska Revenue Act of 1967 sections 77-2701 to 77-27135 or any interest, penalty, or addition to such tax which has been erroneously refunded is an erroneous refund as defined in the Internal Revenue Code 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. 65. That section 77-2790, Revised Statutes Supplement, 1984, 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 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~~ the Nebraska Revenue Act of 1967 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~~ the act, 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~~ the act 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~~ the Nebraska Revenue Act of 1967 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, 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 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~~ the Nebraska Revenue Act of 1967.

(7) If any person for frivolous or groundless reasons or with the intent to delay or impede the administration of the Nebraska Revenue Act of 1967: (a)

Fails to pay over any tax due and owing under such sections; (b) fails to file any return required under such sections; or (c) files what purports to be a return, but which does not contain sufficient information from which to determine the correctness of the self-assessment of tax, or which contains information that indicates that the self-assessment of tax is substantially incorrect, such person shall pay a penalty of five hundred dollars for each occurrence. The penalty provided by the subsection shall be in addition to any other penalties provided by law.

(8) Any person who aids, procures, advises, or assists in the preparation of any return, affidavit, refund claim, or other document with the knowledge that its use will result in the material understatement of the tax liability of another person shall, in addition to other penalties provided by law, pay a penalty of one thousand dollars with respect to each separate return or other document.

(a) For the purposes of this subsection, a person furnishing typing, reproducing, or other mechanical assistance shall not be treated as having aided or assisted in the preparation of such document.

(b) A determination of a material deficiency shall not be sufficient to show that a person has aided or assisted in a material understatement of the tax liability of another person.

(c) The penalty in this subsection shall not be imposed more than once on any person for having aided or assisted in the preparation of documents for the same taxpayer, the same tax, and the same tax period regardless of the number of documents involved.

(d) Such penalty shall apply whether or not the understatement is with the consent of the person authorized to present the return, affidavit, refund claim, or other document.

(9) ~~(7)~~ The additions to the income tax and penalties relating thereto provided by the ~~provisions of sections 77-2701 to 77-27,135~~ Nebraska Revenue Act of 1967 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~~ such act to income tax or the tax imposed by the ~~provisions of sections 77-2701 to 77-27,135~~ act 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 underpayment of estimated tax as provided in subsection (3) of this section; or

(c) Any additional penalty under subsection (6), (7), or (8) of this section.

~~(8)~~ (10) 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)~~ (11) 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.

(12) If any person fails to comply with the reporting or filing requirements of sections 77-2772, 77-2775, and 77-2786, or the regulations adopted and promulgated thereunder, the Tax Commissioner may impose, assess, and collect a penalty against such person for each instance of noncompliance of twenty-five per cent of the tax due. Such amount shall be in addition to any other penalty, tax, or interest otherwise imposed by law for such noncompliance.

Sec. 66. That section 77-2793, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2793. (1) A claim for credit or refund of an overpayment of any income tax imposed by the ~~provisions of sections 77-2701 to 77-27-135~~ Nebraska Revenue Act of 1967 shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires ~~the later,~~ or if no return was filed by the taxpayer, within two years from the time the tax was paid. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) If the claim is filed by the taxpayer during the three-year period prescribed in subsection (1) of this section, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within such three-year period, but is filed within the two-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a

claim was filed on the date the credit or refund is allowed.

(3) If an agreement for an extension of the period for assessment of income taxes is made within the period prescribed in subsection (1) of this section for the filing of a claim for credit or refund, the period for filing claim for credit or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(4) If a taxpayer is required by section 77-2775 to report a change or correction in federal taxable income reported on his or her federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the Tax Commissioner, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the Tax Commissioner. If the report or amended return required by section 77-2775 is not filed within the ninety-day period therein specified, interest on any resulting refund or credit shall cease to accrue after such ninetieth day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction, or items amended on the taxpayer's amended federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

(5) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, the claim may be made under regulations prescribed by the Tax Commissioner consistent with the laws of the United States.

(6) For purposes of this section and section 77-2795, a timely filed petition for redetermination shall be considered a claim for credit or refund filed on the date the notice of deficiency determination was mailed.

Sec. 67. That section 77-27,105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,105. (1) If any income tax, including any interest, penalty, or addition to such tax, and any tax or any interest, penalty, or addition to such tax which has been erroneously refunded, imposed by ~~sections 77-2761 to 77-27,135~~ the Nebraska Revenue Act of 1967 is not paid when due, the commissioner may within three years after the tax is due, file for record in the office of the register of deeds of any county in which property belonging to the taxpayer is situated a notice of lien specifying the year

and the amount of the tax, interest, penalty, additional amount, or addition to such tax due. Such notice shall contain the name and last-known address of the taxpayer, an identification number, and a statement to the effect that the Tax Commissioner complied with all the provisions of ~~sections 77-2701 to 77-27135~~ the Nebraska Revenue Act of 1967 in the determination of the amount required to be paid. From the time of filing for record, the amount set forth in such notice shall constitute a lien upon all real property and rights to real property in the county then owned by the taxpayer, and upon all real property and rights to real property acquired by him or her thereafter and before the lien expires. The fee for filing and indexing each notice of lien shall be one dollar.

(2) The lien may, within five years from the date of filing for record of the notice of lien, be extended by filing for record a new notice. From the time of such filing the lien shall be extended for five years, unless fully released or otherwise discharged. The fee for filing and indexing each new notice shall be one dollar.

(3) When a notice of such lien is filed, the appropriate county official shall enter the same in an alphabetical state tax lien index, showing on one line the name and residence of the taxpayer named in such notice, the Tax Commissioner's serial number of such notice, the date and hour of filing, and the amount due. The fee for filing and indexing each notice of lien shall be one dollar. All notices shall be filed in numerical order in a file designated state tax lien notices.

(4) When a certificate of discharge of any income tax lien issued by the Tax Commissioner is filed in the office where the notice of lien is filed, the appropriate county official shall enter the same with the date of filing in the state tax lien index on the line where notice of the lien so discharged is entered, and shall file the certificate of discharge with the notice of lien. The fee for filing and indexing each certificate of discharge shall be fifty cents.

(5) The Tax Commissioner may at any time release from a lien all or any portion of the property subject thereto; or he or she may subordinate the lien if he or she determines (a) that the taxes, penalties, additions, or interest are sufficiently secured by a lien on other property of the taxpayer, (b) that the release or subordination of the lien will not endanger or jeopardize the collection of such taxes, penalties, additions, or interest, (c) that a surety bond or securities satisfactory to secure deposits of public funds has been posted, deposited, or pledged with the Tax Commissioner in an amount sufficient to secure the payment of such taxes, penalties, additions, or interest, or (d) all or a part of such taxes, penalties, additions, or interest have been paid. The fee for filing and indexing each certificate of

release shall be one dollar. A certificate by the Tax Commissioner to the effect that any property has been released from a lien, or that such lien has been subordinated, shall be conclusive evidence that such action has been taken.

(6) The register of deeds of each county shall bill the Tax Commissioner on a quarterly basis for fees for documents filed by him or her for the Tax Commissioner.

(7) In any case where when there has been a refusal or neglect to pay any income tax, including interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, the Tax Commissioner may file an action in the district court of the county in which such lien is filed to enforce the lien upon any real property and rights to real property or to subject any such property and rights to property owned by the delinquent, or in which he or she has any right, title, or interest, to the payment of such tax. Such action shall be commenced and pursued in like manner as is provided for the foreclosure of mortgages. Such action may be commenced at any time within five years following the date such lien arose or was last extended.

Sec. 68. That section 77-27,119, Revised Statutes Supplement, 1984, 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 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 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 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.

(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, 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 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 the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(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.

(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. 69. That section 81-1561, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1561. The Tax Commissioner shall deduct and withhold from the litter fee collected a fee sufficient to reimburse himself or herself for the cost of collecting and administering the litter fee and shall deposit such collection fee in the Litter Fee Collection Fund which is hereby created. The Litter Fee Collection Fund shall be appropriated to the Department of Revenue. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269. The Tax Commissioner shall remit the balance of the litter fee collections to the Department of Environmental Control.

The department shall allocate and distribute funds in percentage amounts to be determined by the council on an annual basis, after a public hearing on a date to be determined by the council, from the fund for the following activities:

(1) Programs of public education, motivation, and participation; aimed at creating an ethic conducive to the reduction of litter, establishing an attitude against littering and a desire for a clean environment, and securing greater awareness of and compliance with antilitter laws. Such programs shall include:

(a) The distribution of informative materials to elementary and secondary schools;

(b) The purchase and erection of roadside signs;

(c) The organization and operation of cleanup drives conducted by local agencies and organizations using volunteer help;

(d) Grants to state and local government units and agencies and private organizations for developing and conducting antilitter programs; and

(e) Any other public information method selected by the department, including the use of media;

(2) Cleanup of public highways, waterways, recreation lands, urban areas, and public places within the state, including, but not limited to: ~~the following-~~

(a) Grants to cities and counties for payment of personnel employed in the pickup of litter;

(b) Grants for programs aimed at increasing the use of youth and unemployed persons in seasonal and part-time litter pickup programs and to establish work release and other programs to carry out the purposes of sections 81-1534 to 81-1566; ~~7 81-1548-01 to 81-1548-04, and 81-1560-01 to 81-1560-03.~~

(c) Grants to public and private agencies and persons to conduct surveys of amounts and composition of litter and rates of littering; and

(d) Grants to public and private agencies and persons for research and development in the fields of litter reduction, removal, and disposal, including the

evaluation of behavioral science techniques in litter control and the development of new equipment, and to implement such research and development when appropriate; and

(3) New or improved community recycling and source separation programs, including, but not limited to:

(a) Expansion of existing and creation of new community recycling centers;

(b) Expansion of existing and creation of new source separation programs;

(c) Research and evaluation of markets for the materials and products recovered in source separation and recycling programs; and

(d) Providing advice and assistance on matters relating to recycling and source separation including information and consultation on available technology, operating procedures, organizational arrangements, markets for materials and products recovered in recycling and source separation, transportation alternatives, and publicity techniques.

Sec. 70. The Revisor of Statutes shall substitute the phrase the Nebraska Revenue Act of 1967 for the phrase sections 77-2701 to 77-27,135 wherever the latter phrase appears in the following sections, except that the phrases such act and the act may be used to avoid repetition of the phrase the Nebraska Revenue Act of 1967: 66-461, 77-2705, 77-2707, 77-2710, 77-2711, 77-2713, 77-2714, 77-2728, 77-2753, 77-2755 to 77-2757, 77-2759 to 77-2762, 77-2768, 77-2771, 77-2773, 77-2775, 77-2780, 77-2785, 77-2789, 77-2792, 77-2794, 77-2798, 77-2799, 77-27,102, 77-27,103, 77-27,106 to 77-27,111, 77-27,113 to 77-27,117, 77-27,120, 77-27,123 to 77-27,125, 77-27,127, 77-27,128, and 77-27,130 to 77-27,135.

Sec. 71. Sections 13 to 32 and 73 of this act shall become operative for all taxable years commencing on or after January 1, 1986, sections 33 to 36, 49 to 68, and 74 shall become operative for all taxable years commencing, or deemed to commence, on or after January 1, 1985, and sections 40 to 48 and 75 shall become operative on October 1, 1985. The remaining sections of this act shall become operative on their effective date.

Sec. 72. That original sections 77-1342, 77-2106.01, and 81-1561, Reissue Revised Statutes of Nebraska, 1943, and section 76-214, Revised Statutes Supplement, 1984, and also sections 77-3.101 to 77-3.108, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 73. That original sections 66-410.06, 66-514, 66-605, 66-616, 66-618, and 66-631, Reissue Revised Statutes of Nebraska, 1943, and sections 66-410.03, 66-602, 66-606, 66-607, 66-619, and 66-624, Revised Statutes Supplement, 1984, are repealed.

Sec. 74. That original sections 77-2717, 77-2727, 77-2730, 77-2772, 77-2781, 77-2786, 77-2793, and

77-27,105, Reissue Revised Statutes of Nebraska, 1943, and sections 66-1047, 66-1048, 66-1050, 66-1055, 77-2715, 77-2716, 77-2734.01, 77-2734.03, 77-2734.10, 77-2734.12, 77-2734.14, 77-2734.15, 77-2769, 77-2788, 77-2790, and 77-27,119, Revised Statutes Supplement, 1984, are repealed.

Sec. 75. That original section 77-2709, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2701, 77-2702, 77-2703, 77-2704, 77-2708, and 77-2712, Revised Statutes Supplement, 1984, are repealed.