

LEGISLATIVE BILL 775

Approved by the Governor May 27, 1987

Introduced by Barrett, 39, Speaker, for the Governor

AN ACT relating to revenue and taxation; to amend sections 77-202, 77-2701, 77-2708, and 77-2734.05, Reissue Revised Statutes of Nebraska, 1943; to adopt the Employment and Investment Growth Act; to define terms; to provide an election for income tax treatment of certain gain from the sale of capital stock as prescribed; to eliminate provisions relating to a sales and use tax refund; to harmonize provisions; to provide severability; to repeal the original sections, and also sections 77-27,185 and 77-27,186, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. Sections 1 to 10 of this act shall be known and may be cited as the Employment and Investment Growth Act.

Sec. 2. (1) The Legislature hereby finds and declares that:

(a) Current economic conditions in the State of Nebraska have resulted in unemployment, outmigration of people, loss of jobs, and difficulty in attracting and retaining business operations; and

(b) Major revisions in Nebraska's tax structure are necessary to accomplish economic revitalization of Nebraska and to be competitive with other states involved in economic revitalization and development.

(2) It is the policy of this state to make revisions in Nebraska's tax structure in order to encourage new businesses to relocate to Nebraska, retain existing businesses and aid in their expansion, promote the creation and retention of new jobs in Nebraska, and attract and retain investment capital in the State of Nebraska.

Sec. 3. For purposes of the Employment and Investment Growth Act, unless the context otherwise requires:

(1) Any term shall have the same meaning as used in Chapter 77, article 27;

(2) Base year shall mean the year immediately preceding the year during which the application was submitted;

(3) Base-year employee shall mean any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project;

(4) Compensation shall mean the wages and other payments subject to withholding for federal income tax purposes;

(5) Entitlement period shall mean the year during which the required increases in employment and investment were met or exceeded, and the next six years;

(6) Investment shall mean the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation;

(7) Motor vehicle shall mean any motor vehicle, trailer, or semitrailer as defined in section 60-301 and subject to licensing for operation on the highways;

(8) Nebraska employee shall mean an individual who is either a resident or partial-year resident of Nebraska;

(9) Number of new employees shall mean the excess of the average number of employees employed at the project during a year over the average number of base-year employees. The average number of employees shall be determined by converting into equivalent employees of forty hours per week the number of hours paid for the time periods including the first day of the year and the last day of each quarter of the year;

(10) Qualified business shall mean any business engaged in the activities listed in subdivisions (b)(i) to (v) of this subdivision or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business shall not include any business activity in which eighty per cent or more of the total sales are sales to the ultimate consumer of tangible personal property which is not (a) assembled, fabricated, manufactured, or processed by the taxpayer or (b) used by the purchaser

in any of the following activities:

(i) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(ii) The performance of data processing, telecommunication, insurance, or financial services;

(iii) The assembly, fabrication, manufacture, or processing of tangible personal property;

(iv) The administrative management of any activities, including headquarter facilities relating to such activities; or

(v) Any combination of the activities listed in this subdivision (10);

(11) Qualified property shall mean any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, or the components of such property, that will be located and used at the project. Qualified property shall not include (a) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Employment and Investment Growth Act to another person;

(12) Taxpayer shall mean any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under Chapter 77, article 38, any corporation that is a member of the same unitary group which is subject to such taxes, and any partnership, subchapter S corporation, or joint venture when the partners, shareholders, or members are subject to such taxes; and

(13) Year shall mean the taxable year of the taxpayer.

Sec. 4. (1) In order to utilize the incentives set forth in the Employment and Investment Growth Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

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

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

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan; and

(d) A nonrefundable application fee of five

hundred dollars. The fee shall be deposited into the Employment and Investment Growth Fund, which fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, and the amounts of increased employment and investment.

(3) Once reasonably satisfied that the plans of the applicant constitute a project in a qualified business within this state, that the plans will result in either (a) the investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (b) the investment in qualified property of at least twenty million dollars, and that the required levels of employment and investment for the project will be met prior to the end of the sixth year after the year in which the application was submitted, the Tax Commissioner shall approve the application. Employees and investments shall not be counted toward meeting the amounts of employment and investment required in this subsection or the credits allowed by section 5 of this act if such employees and investments were part of a business acquired by and continued by the taxpayer which had been operated by another person at the project location within one year prior to the date the application is filed.

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

The agreement shall state:

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

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

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act; and
(d) The date the application was filed.

(5) The incentives contained in section 5 of this act shall be in lieu of the tax credits allowed by

section 77-27,188 for any project. In computing credits under section 77-27,188, any investment or employment which is eligible for benefits under the Employment and Investment Growth Act shall be subtracted from the increases computed for determining the credits under section 77-27,188.

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

Sec. 5. (1) A taxpayer who has signed an agreement under section 4 of this act may elect to determine taxable income for purposes of the Nebraska corporate income tax imposed by section 77-2734.02 by multiplying federal taxable income, as adjusted, by the sales factor only. The election may be made for the year during which the application was filed and for each year thereafter through the eighth year after the end of the entitlement period. The election shall be made for the year of the election by computing taxable income using the sales factor only on the tax return.

(2) A taxpayer who has signed an agreement under section 4 of this act shall receive the incentive provided in this subsection if the agreement contains one or more projects which together will result in the investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees. Such ten million dollar investment and hiring of at least one hundred new employees shall be considered a required level of investment and employment for this subsection and for the recapture of personal property tax only.

The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the agreement between the taxpayer and the Tax Commissioner was signed shall constitute a separate class of personal property:

(a) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the

transportation of an elected official;

(b) Mainframe business computers used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user plus all peripheral components connected to such computers; and

(c) Personal property which is business equipment located in a single project if (i) the business equipment is utilized in a business which is involved directly in the manufacture or processing of agricultural products, (ii) the business equipment has a minimum aggregate value of ten million dollars, and (iii) the use and value of the business equipment has been certified by the Tax Commissioner.

Such property shall be exempt from the tax on personal property for a period of fifteen years. The fifteen-year exemption period for such property shall begin when the taxpayer and the Tax Commissioner have signed the agreement.

(3) When the taxpayer has met the required levels of employment and investment contained in the agreement, the taxpayer shall also be entitled to the following incentives:

(a) A refund of all sales and use taxes paid under the Nebraska Revenue Act of 1967 and the Local Option Revenue Act from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty per cent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of the sales and use taxes paid under the Nebraska Revenue Act of 1967 and the Local Option Revenue Act on the types of purchases, including rentals, listed in subdivision (a) of this subsection

for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(4) Any taxpayer who qualifies for the incentives contained in subsections (1) and (3) of this section and who has added at least thirty new employees at the project shall also be entitled to:

(a) A credit equal to five per cent of the amount by which the total of the compensation paid during the year to Nebraska employees, other than base-year employees, while employed at the project and the compensation paid during the entire year to base-year employees who are employed at the project for all or part of the year exceeds the compensation paid to base-year employees during the base year. If the amount of compensation paid during the base year to the base-year employees is less than the average of such amounts paid during the base year and the two preceding years, the average amount of compensation paid during such three-year period shall be used to compute the credit contained in this subdivision.

The compensation paid during the base year shall be adjusted for computing the credit for the current year when additional base-year employees are employed at the project; and

(b) A credit equal to ten per cent of the investment made in qualified property at the project.

The credits prescribed in subdivisions (a) and (b) of this subsection shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

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

Sec. 6. (1)(a) The credits prescribed in section 5 of this act shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. The credits may be used to obtain a refund of sales and use taxes under the Nebraska Revenue Act of 1967 and the Local Option Revenue Act which are not otherwise refundable that are paid on purchases, including rentals, for use at the project.

(b) The credits may be used as allowed in subdivision (a) of this subsection and shall be applied in the order in which they were first allowed. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(c) The credit may be carried over until fully utilized, except that such credit may not be carried over more than eight years after the end of the entitlement period.

(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each quarter for refunds under the Employment and Investment Growth Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

(c) Any refund claim for sales and use tax on materials incorporated into real estate as a part of the project shall be filed by and the refund paid to the owner of the improvement to real estate. A refund claim for such materials purchased by a purchasing agent shall include a copy of the purchasing agent appointment, the contract price, and a certification by the contractor or repairperson of the percentage of the materials incorporated into the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Employment and Investment Growth Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three calendar years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.

(e) Interest shall not be allowed on any sales and use taxes refunded under the Employment and Investment Growth Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into the project and becomes the property of the owner of the

improvement to real estate. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the improvement to real estate.

Sec. 7. (1) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the sixth year after the end of the year the application was submitted for such project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Employment and Investment Growth Act shall be recaptured or disallowed.

(2) The recapture or disallowance shall be as follows:

(a) In the case of a taxpayer who failed to meet the required levels within the required time period, all reduction in the personal property tax because of the Employment and Investment Growth Act shall be recaptured and any reduction in the corporate income tax arising solely because of an election under subsection (1) of section 5 of this act shall be deemed an underpayment of the income tax for the year in which the election was exercised and shall be immediately due and payable; and

(b) In the case of a taxpayer who has failed to maintain the project at the required levels of employment and investment for the entire entitlement period, any refunds in tax allowed under subdivision (3)(a) of section 5 of this act and any refunds or reduction in tax allowed because of the use of a credit allowed under subsection (4) of section 5 of this act shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. One-seventh of the refunds and one-seventh of the credits used shall be recaptured and one-seventh of the remaining carryovers shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

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

(4) Any personal property tax that would have been due except for the exemption allowed under the Employment and Investment Growth Act, to the extent it becomes due under subdivision (2)(a) of this section, shall be considered an underpayment of such tax and shall be immediately due and payable to the county in which the property is located.

(5) Notwithstanding any other limitations contained in the laws of this state, collections of any taxes deemed to be underpayments by this section shall be allowed for a period of ten years after the signing of the agreement or three years after the end of the entitlement period, whichever is later.

(6) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Employment and Investment Growth Act unless the recapture was in error.

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

Sec. 8. (1) The incentives allowed under the Employment and Investment Growth Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a subchapter S corporation, or an estate or trust may be distributed to the partners, shareholders, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 7 of this act; and

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

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

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

(4) If a taxpayer operating a project and

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

Sec. 9. Any complete application filed on or after the date of passage of this legislative bill shall be considered a valid application on the date submitted for the purposes of the Employment and Investment Growth Act.

Sec. 10. The Tax Commissioner shall submit an annual report to the Legislature no later than March 15 of each year. The report shall list the agreements which have been signed during the year and the agreements which are still in effect, with the identity of the taxpayer, the location of the project, and the planned levels of employment and investment for the project.

The report shall also state in the aggregate the refunds allowed on the investment, the credits earned, the credits used to reduce the income tax, and the credits used to obtain sales and use tax refunds, except that no report of the incentives used shall be made if there are less than ten taxpayers receiving benefits under the Employment and Investment Growth Act. All reports shall be for the previous calendar year, except when a report is not made because of the number of taxpayers, the next report shall include the total benefits allowed since the last reported year.

Sec. 11. For purposes of this section and section 12 of this act, unless the context otherwise requires:

(1) Capital stock shall mean common or preferred stock, either voting or nonvoting. Capital stock shall not include stock rights, stock warrants, stock options, or debt securities;

(2)(a) Corporation shall mean any corporation which, at the time of the first sale or exchange for which the election is made, has been in existence and actively doing business in this state for at least three years.

(b) Corporation shall also include:

(i) Any corporation which is a member of a unitary group of corporations, as defined in section 77-2734.04, which includes a corporation defined in subdivision (2)(a) of this section; and

(ii) Any predecessor or successor corporation of a corporation defined in subdivision (2)(a) of this section.

(c) All corporations issuing capital stock for which an election under section 12 of this act is made shall, at the time of the first sale or exchange for which the election is made, have (i) at least five shareholders and (ii) at least two shareholders or groups of shareholders who are not related to each other and each of which owns at least ten per cent of the capital stock.

For purposes of this subdivision, two persons shall be considered to be related when, under section 318 of the Internal Revenue Code of 1986, one is a person who owns, directly or indirectly, capital stock that if directly owned would be attributed to the other person or is the brother, sister, aunt, uncle, cousin, niece, or nephew of the other person who owns capital stock either directly or indirectly; and

(3) Predecessor or successor corporation shall mean a corporation that was a party to a reorganization that was entirely or substantially tax free.

Sec. 12. (1)(a) Every resident individual may elect under this section to subtract from federal adjusted gross income the gain from the sale or exchange of capital stock of a corporation acquired by the individual (i) on account of employment by such corporation or (ii) while employed by such corporation.

(b) The election may be made for all taxable years beginning or deemed to begin on or after January 1, 1989, except that such election may be made with respect to one half of such gain included in federal adjusted gross income for taxable years beginning or deemed to begin on or after January 1, 1988.

(2)(a) Each individual shall be entitled to one election under subsection (1) of this section during his or her lifetime for the capital stock of one corporation.

(b) The election shall apply to subsequent sales and exchanges in any taxable year if the sale or exchange is of capital stock in the same corporation and such capital stock was acquired as provided in subsection (1) of this section.

(c) After the individual makes an election, such election shall apply to the sale or exchange of capital stock of the corporation transferred by inter vivos gift from the individual to his or her spouse or issue or a trust for the benefit of the individual's spouse or issue if such capital stock was acquired as

provided in subsection (1) of this section. This subdivision shall apply, in the case of the spouse, only if the spouse was married to such individual on the date of sale or exchange or the date of death of the individual.

(d) If the individual dies without making an election, the surviving spouse or, if there is no surviving spouse, the oldest surviving issue may make the election for capital stock that would have qualified under subdivision (c) of this subsection.

(3) An election under subsection (1) of this section shall be made by including a written statement with the taxpayer's Nebraska income tax return or an amended return for the taxable year for which the election is made. The written statement shall identify the corporation that issued the stock and the grounds for the election under this section and shall state that the taxpayer elects to have this section apply.

Sec. 13. That section 77-202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-202. (1) The following property shall be exempt from taxes:

(a) The property of the state and its governmental subdivisions;

(b) Property owned by and used exclusively for agricultural and horticultural societies;

(c) Property owned by educational, religious, charitable, or cemetery organizations and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization shall mean an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or a museum or historical society operated exclusively for the benefit and education of the public, and charitable organization shall mean an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons; and

(d) Household goods and personal effects when such property is not owned or used for financial gain or profit to either the owner or user.

(2) The increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the assessment of such land.

(3) The premiums received by any insurance company authorized to do business in this state on pension, profit-sharing, and other employee benefit plans which are described in section 805(d)(1) of the Internal Revenue Code of 1954, as amended as of January 1, 1965, shall be exempt from taxes.

(4) Life insurance and life insurance annuity contracts and any payment connected therewith and any right to pension or retirement payments shall be exempt from the intangible tax.

(5) Vehicles registered under section 60-305.09 and paying the registration fees prescribed in such section shall be exempt from payment of ad valorem taxes.

(6) Agricultural income-producing machinery and equipment shall be exempt from the personal property tax except: (a) Motor vehicles, as defined in section 60-301; (b) property assessed by the Tax Commissioner as provided in sections 77-601 to 77-633; (c) property owned by parties deemed public service entities subject to the provisions of sections 77-801 to 77-803; and (d) any building or fixture, whether permanently attached to the land or not.

(7) Business inventory shall be exempt from the personal property tax.

(8) Feed, fertilizer, and farm inventory shall be exempt from the personal property tax.

(9) Grain, seed, livestock, poultry, fish, honeybees, and fur-bearing animals shall be exempt from the personal property tax.

(10) Any personal property exempt pursuant to subsection (2) of section 5 of this act shall be exempt from the personal property tax.

Sec. 14. That section 77-2701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2701. Sections 77-2701 to 77-27,135; ~~77-27,185; and 77-27,186~~ and sections 11 and 12 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. 15. That section 77-2708, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(b)(i) On or before the twenty-fifth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner may by rule and regulation permit or require quarterly 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 dollars in any quarter 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, an accrual basis, or any generally recognized accounting basis which correctly reflects the operation of the business may file the sales and use tax returns required by the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) The taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty of forfeiture of the collection fee

allowed pursuant to subdivision (d) of this subsection or five dollars, whichever is greater.

(d) The taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, 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 77-27,186,~~ the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

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

(c) Every claim shall be in writing 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 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, ~~er a refund under section 77-27,186,~~ no interest shall be allowed when such excess is refunded or credited.

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

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

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

(k) The Attorney General shall prosecute the action provided for in subdivision (i) of this subsection, and the provisions of state law and the rules of civil procedure relating to service of summons, pleadings, 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 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. 16. That section 77-2734.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2734.05. (1) Any Except as provided in subsection (1) of section 5 of this act, unitary business having income from business activity that is taxable both within and without this state shall determine its taxable income by multiplying its federal taxable income, as adjusted, by a fraction, which is the average of the property factor plus the payroll factor plus the sales factor.

(2) If a unitary business does not have any property, payroll, or sales anywhere, then the average in subsection (1) of this section shall be the average of the remaining factors.

(3) In the computation of the factors only the part of a unitary group that is subject to the Internal Revenue Code shall be included, except as provided in section 77-2734.09.

Sec. 17. The refund of sales and use taxes which was authorized by section 77-27,186 shall not be available for purchases made on or after the effective date of this act. For purposes of this section, a purchase shall be considered made on or after the effective date of this act if there was no binding contract to purchase or rent executed prior to the effective date of this act or the purchase qualifies for any incentive under the Employment and Investment Growth Act.

Sec. 18. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 19. That original sections 77-202, 77-2701, 77-2708, and 77-2734.05, Reissue Revised Statutes of Nebraska, 1943, and also sections 77-27,185 and 77-27,186, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 20. Since an emergency exists, this act

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shall be in full force and take effect, from and after its passage and approval, according to law.