

## LEGISLATIVE BILL 345

Approved by the Governor June 10, 1993

Introduced by Revenue Committee: Warner, 25, Chairperson;  
 Coordsen, 32; Kristensen, 37; Schellpeper, 18;  
 Wickersham, 49; Will, 8; Withem, 14

AN ACT relating to revenue and taxations; to amend sections 57-234, 77-366, 77-375, 77-377, 77-3,110, 77-2706, 77-2709.01, 77-2753, 77-2775, 77-2777, 77-2778, 77-2780, 77-2785, 77-2786, 77-2789, 77-2790, 77-2793, 77-27,188.01, 77-3901, and 77-3904 to 77-3906, Reissue Revised Statutes of Nebraska, 1943, sections 77-684, 77-2101.02, 77-2702.05 to 77-2702.07, 77-2702.09, 77-2702.11 to 77-2702.19, 77-2702.23, 77-2704.02, 77-2704.05 to 77-2704.12, 77-2704.15, 77-2704.24, 77-2704.25, 77-2704.28 to 77-2704.33, 77-2704.35, 77-2705, and 77-27,119, Revised Statutes Supplement, 1992, sections 21-330 and 77-2709, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 1 and 30, respectively, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, sections 77-2106.01, 77-2702.03, 77-2704.13, 77-2708, 77-2708.01, 77-2711, and 77-2794, Revised Statutes Supplement, 1992, as amended by sections 20, 23, 27, 28, 29, 31, and 38, respectively, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, section 77-2701, Revised Statutes Supplement, 1992, as amended by section 22, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 69, Legislative Bill 138, Ninety-third Legislature, First Session, 1993, section 77-2703, Revised Statutes Supplement, 1992, as amended by section 26, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 45, Legislative Bill 112, Ninety-third Legislature, First Session, 1993, section 77-202.01, Reissue Revised Statutes of Nebraska, 1943, as amended by section 7, Legislative Bill 346, Ninety-third Legislature, First Session, 1993, section 5, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 21, Legislative Bill 346, Ninety-third Legislature, First Session, 1993; to change provisions relating to refunds of a corporation fee or assessment, delinquent taxes, taxes on fractional oil, gas, and hydrocarbon interests, personnel of the Department of Revenue, and prosecutions; to authorize discovery rules, rounding of amounts of tax, and charges for lists; to change provisions relating to car line taxes, generation-skipping

transfer taxes, and sales and use taxes; to define and redefine terms; to change and provide penalties and exemptions; to change provisions relating to income tax; to change collection and lien provisions; to provide for applicability of certain changes; to change provisions relating to a fee imposed on companies renting certain motor vehicles; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 21-330, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, be amended to read as follows:

21-330. (1) For 1993, in addition to the occupation tax imposed in sections 21-301 to 21-325, there is hereby levied on all corporations subject to the occupation tax and all corporations exempt from the occupation tax pursuant to section 21-321 an additional fee of one hundred fifty dollars per corporation to be levied and collected in the same manner as the occupation tax.

(2) The Secretary of State may credit the fee paid by a corporation pursuant to this section for 1992 against the fee imposed by this section for 1993. Any corporation not subject to the fee imposed by this section for 1993 and which paid the fee or assessment imposed for 1992 ~~may file a claim for refund for the fee or assessment with the Secretary of State. Upon approval of the claim, the Secretary of State shall issue~~ shall be issued a refund of the fee or assessment paid for 1992.

Sec. 2. That section 5, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, be amended to read as follows:

Sec. 5. (1) Unless otherwise specifically provided, the interest rate assessed on delinquent payments of any taxes or special assessments owing to the State of Nebraska shall be assessed at a rate of fourteen percent per annum through December 31, 1992, and at the per annum rate determined pursuant to subsection (2) of this section after such date.

(2) Commencing January 1, 1993, the interest rate assessed pursuant to subsection (1) of this section shall be redetermined every other year. The rate shall be determined by the Tax Commissioner and shall be equal to the average short-term borrowing rate for the federal government during July of the previous year rounded to the nearest whole percentage point plus three percentage points. If the new rate does not increase or decrease the old rate by at least two percentage points, the old rate shall continue in effect.

(3)(a) The rate determined pursuant to subsection (2) of this section shall apply for the period from its effective date through the date of payment or up to the effective date of the succeeding new rate, whichever is earlier.

(b) Interest on taxes or special assessments shall be calculated using the different rates which are effective over the period of delinquency.

(c) For any taxes or special assessments that were delinquent and unpaid on or before December 31, 1992, the interest rate shall be fourteen percent per annum through December 31, 1992.

(4) For any credits or refunds of taxes or special assessments on which interest is to be determined at the rate specified in this section, the calculation of interest shall use the same rates for the same periods that are used for interest on delinquent payments.

(5) For refunds applied for on or after May 1, 1993, for any taxes that were overpaid as of December 31, 1992, the interest rate shall be seven percent per annum from the date of overpayment through December 31, 1992.

Sec. 3. That section 57-234, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

57-234. (1) ~~Where~~ When oil, gas, or other hydrocarbon wells or fields belonging to multiple owners are operated as a unit, the owner of each fractional interest in such unit shall be liable for the same proportion of the tax levied against the ~~total real property of the unit~~ that his ~~or her~~ fractional interest therein bears to the total of interests in such unit and shall be liable for the tax levied against his or her taxable value in the tangible personal property of such unit.

(2) The unit operator shall collect from the owners of the fractional interests and remit to the county treasurer of the county in which the unit is located ~~the tax~~ all taxes levied against the ~~entire real or tangible personal property of the unit.~~ The unit operator may deduct and withhold from royalty payments, or any other payments made to any fractional interest owner, either in kind or in money, the estimated amount of the tax to be paid by such fractional interest owner. Any difference between the estimated tax so withheld and the actual tax payable by any owner of a fractional interest may be accounted for by adjustments in royalty or other payments made to such owner subsequent to the time the actual tax is determined.

(3) At the request of any unit operator who does not disburse payments to fractional interest owners, the first purchaser shall collect the tax from the fractional interest owners and transfer such proceeds to the unit operator who shall remit to the treasurer the ~~tax~~ taxes levied against the ~~entire~~ unit. Such first purchaser shall collect from the fractional interest owners under the same procedure outlined for the unit operator in this section.

(4) Failure of the unit operator to collect and remit the tax as provided in this section shall not preclude the county treasurer from utilizing lawful collection and enforcement remedies and procedures ~~against the owner of any fractional interest~~ to collect the tax owed by ~~such~~ the fractional interest owner, ~~;~~ but a nonoperating owner shall not be subject to penalty or interest upon the tax owed unless he ~~or she~~ fails to remit such tax within twenty days after notification to him or her by the

county treasurer of the default of the operator.

(5) For the purposes of this section, unit shall mean any single oil, gas, or other hydrocarbon well or field which has multiple ownership, or any combination of oil, gas, or other hydrocarbon wells, fields, and properties consolidated into a single operation, whether by a formal agreement or otherwise, and owner shall mean the holder of any interest or interests in any such property or unit including royalty interests.

(6) The county assessor shall assist the county treasurer in the preparation of a tax statement to the unit operator to aid in the collection of all property taxes assessed against the unit.

Sec. 4. That section 77-202.01, Reissue Revised Statutes of Nebraska, 1943, as amended by section 7, Legislative Bill 346, Ninety-third Legislature, First Session, 1993, be amended to read as follows:

77-202.01. Any organization or society seeking a tax exemption provided in subdivisions (1)(b) and (1)(c) of section 77-202 for any real or personal property, except motor vehicles, shall apply for exemption to the county assessor before January 1 of the year for which the exemption is sought on forms prescribed by the Tax Commissioner. The county assessor shall examine the application and recommend either taxable or exempt status for the real property or tangible personal property, except motor vehicles, to the county board of equalization on or before February 1 following.

Any organization or society which misses the January 1 deadline for applying for exemption may apply prior to May 1 for tax year 1993 and February 1 for all other tax years to the county board of equalization for a waiver so that the county assessor may consider the application for exemption. The county board of equalization shall grant the waiver upon a finding that good cause exists for the failure to make application by January 1. When the waiver is granted, the county assessor shall examine the application and recommend either taxable or exempt status for the real property or tangible personal property, except motor vehicles, to the county board of equalization and ~~shall~~ may, beginning in 1993, assess a penalty against the organization of ten percent of the tax that would have been assessed had the waiver been denied.

Sec. 5. That section 77-366, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-366. (1) The Tax Commissioner shall appoint ~~and or~~ employ ~~such~~ deputies, investigators, inspectors, agents, security personnel, and other persons as he or she deems necessary to administer and effectively enforce all provisions of the revenue laws of this state. ~~Each appointed officer~~ The appointed personnel shall hold ~~his or her~~ office at the pleasure of the Tax Commissioner. Any appointed or ~~nonappointed~~ employee employed personnel shall perform the duties assigned to ~~him or her~~ by the Tax Commissioner.

(2) ~~All deputies and similar officers~~ personnel appointed or employed by the ~~commissioner~~ Tax Commissioner shall be bonded under the blanket surety bond required by section 11-201. ~~Such deputies~~

~~and officers are~~ As specified by the Tax Commissioner, certain personnel shall be vested with the authority and power of a law enforcement officer to carry out the revenue laws of this state administered by the Tax Commissioner or the Department of Revenue. Such ~~officers are~~ personnel shall be empowered to arrest with or without a warrant, file and serve any lien, seize property, serve and return a summons, warrant, or ~~and~~ subpoena issued by the Tax Commissioner, collect taxes, and bring an offender before any court with jurisdiction in this state, except that such ~~officer~~ personnel shall not be authorized to carry weapons or enforce any laws other than revenue laws administered by the Tax Commissioner or the Department of Revenue.

(3) Subsection (2) of this section shall not be construed to restrict any other law enforcement officer of this state from enforcing any state law, revenue or otherwise.

Sec. 6. That section 77-375, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-375. (1) The Tax Commissioner, or his or her duly authorized representative, may administer oaths and compel the attendance of witnesses and require the production of records as may be necessary for the performance of his or her responsibilities under applicable state law.

(2) The Tax Commissioner may adopt and promulgate rules of procedure for discovery, not in conflict with the laws governing discovery in civil cases, as may be necessary for the performance of his or her responsibilities under applicable state law.

Sec. 7. That section 77-377, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-377. The Department of Revenue may request the Attorney General or any county attorney to institute proceedings, actions, and prosecutions as may be required to enforce the laws relating to penalties, liabilities, assessments, collection, and payment of revenue and punishment of public officers, persons, or officers or agents of corporations for failure to comply with or for neglect to comply with the provisions of any revenue law administered by or subject to the administrative jurisdiction of the department.

Sec. 8. (1) When the Department of Revenue finds that the administration of the revenue laws might be more efficiently and economically conducted, the department may require or allow for rounding of all amounts on returns or reports, including amounts of tax. Amounts will be rounded to the nearest dollar, with amounts ending in fifty cents or more rounded to the next highest dollar.

(2) The department may, on an annual basis, eliminate account balances of one dollar or less under uniform procedures developed by the department.

Sec. 9. The Department of Revenue may charge persons and state agencies for any listings made by the department of information that is not confidential. The Tax Commissioner shall set the price of such listings which shall be the cost of production.

Sec. 10. That section 77-3,110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3,110. All funds received pursuant to section 77-3,109 and section 9 of this act shall be deposited in the Department of Revenue Miscellaneous Receipts Fund which is hereby created. All money in the fund shall be administered by the Department of Revenue and shall be used to defray the cost of production of the publications listed in section 77-3,109 or of the listings described in section 9 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to ~~72-1269~~ 72-1276.

Sec. 11. That section 77-684, Revised Statutes Supplement, 1992, be amended to read as follows:

77-684. The Tax Commissioner shall each year establish a tax rate for purposes of taxation against the taxable value as provided in sections 77-682 and 77-683 at a rate which shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state for the current tax year. When such tax rate has been determined, the Tax Commissioner shall send to each car line company a statement showing the taxable value, the tax rate, and the amount of the tax and a statement that such tax is due and payable to the Tax Commissioner on December 31 next following the levy thereof. The Tax Commissioner shall remit the tax collected, less a three-percent collection fee, to the State Treasurer for distribution among the taxing subdivisions in ~~the manner prescribed for distribution of railroad value pursuant to section 77-604~~ proportion to all railroad taxes levied by taxing subdivisions. The collection fee shall be remitted to the State Treasurer for credit to the Tax Commissioner Revolving Fund.

Sec. 12. That section 77-2101.02, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2101.02. There is hereby imposed a generation-skipping transfer tax upon the generation-skipping transfer or distribution of property of every resident of this state and upon the generation-skipping transfer of Nebraska real estate and tangible personal property situated in Nebraska by a nonresident. The amount of the generation-skipping transfer tax shall be the maximum state tax credit allowance upon the tax imposed by Chapter 13 of the Internal Revenue Code of 1986, as amended, reduced by the lesser of (1) the aggregate amount of all transfer taxes paid to any state or territory, the District of Columbia, or any possession of the United States in respect of any property subject to the generation-skipping transfer tax or (2) ~~the sum of (a)~~ the amount determined by multiplying the maximum state tax credit allowance with respect to the taxable transfer by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property, ~~and (b) the amount of Nebraska inheritance taxes paid.~~

Sec. 13. That section 77-2106.01, Revised Statutes Supplement, 1992, as amended by section 20, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, be amended to

read as follows:

77-2106.01. When any amount of transfer tax in excess of that legally due has 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 plus interest at the rate specified in section 5 of this act, as such rate may from time to time be adjusted. All claims for refund on account of the overpayment of transfer taxes shall 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 tax due, whichever is later. If any overpayment of transfer tax is refunded within ninety days after the last day prescribed for filing the original return of such tax or ninety days after the date on which the original return was filed, if later, no interest shall be allowed under this section on the overpayment. If the Tax Commissioner rejects or disallows any such claim in whole or in part, action in the district courts shall be permitted in accordance with sections 25-21,201 to 25-21,218.

Sec. 14. That section 77-2701, Revised Statutes Supplement, 1992, as amended by section 22, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 69, Legislative Bill 138, Ninety-third Legislature, First Session, 1993, be amended to read as follows:

77-2701. Sections 77-2701 to 77-27,135 and sections 24, 25, and 34 of this act and section 70 of this act and sections 29, 31, and 32 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 15. That section 77-2702.03, Revised Statutes Supplement, 1992, as amended by section 23, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, be amended to read as follows:

77-2702.03. For purposes of sections 77-2702.03 to 77-2713 and sections 24 and 25 of this act and sections 31 and 32 of this act, unless the context otherwise requires, the definitions found in sections 77-2702.04 to 77-2702.23 and sections 31 and 32 of this act shall be used.

Sec. 16. That section 77-2702.05, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.05. Contractor or repairperson shall mean any person who performs any repair services ~~or any improvement upon~~ upon property annexed to, or who annexes property to, real estate, including leased property, and who, as a necessary and incidental part of performing such services, ~~incorporates tangible personal~~ annexes property belonging to him or her ~~into~~ to the ~~property real estate~~ being so repaired or ~~improved~~ annexed. Contractor or repairperson shall not include any person who incorporates live plants into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate. The contractor or repairperson not electing to be taxed as a retailer shall be considered to be the consumer of such ~~tangible personal~~ property furnished by him or her and ~~incorporated into~~ annexed to the ~~property real estate~~ being so repaired



or improved annexed for all the purposes of the Nebraska Revenue Act of 1967. The contractor or repairperson:

(1) Shall be permitted to make an election that he or she will be taxed as a retailer in which case he or she shall not be considered the final consumer of ~~tangible personal property incorporated into~~ annexed to real estate except when ~~such incorporation~~ the transfer of the annexed property is incidental to the transfer of an improvement upon real estate or the real estate;

(2) Shall be permitted to make an election that he or she will be taxed as the consumer of ~~tangible personal property incorporated into~~ property annexed to real estate, will pay the sales tax or remit the use tax at the time of purchase, and will maintain a tax-paid inventory; or

(3) Shall be permitted to make an election that he or she will be taxed as the consumer of ~~tangible personal property incorporated into~~ property annexed to real estate and may issue a resale certificate when purchasing ~~tangible personal~~ property that will be ~~incorporated into~~ annexed to real estate. Such person shall then remit the appropriate use tax on any materials when withdrawn from inventory for ~~incorporation into~~ the purpose of being annexed to real estate at the rate in effect at the time and place of the withdrawal from inventory.

The provisions of this section shall not excuse any person from the obligation to collect sales tax on retail sales of ~~tangible personal~~ property not ~~incorporated into~~ annexed to real estate or from the obligation to pay the sales tax or remit the use tax on tools and other materials consumed that are not ~~incorporated into~~ annexed to real estate.

The Department of Revenue shall not prescribe any requirements of Nebraska sales revenue, percentage or otherwise, restricting any person's election. Any change in an election shall require prior approval by the Tax Commissioner.

Any change in the election shall, if filed on or prior to the fifteenth of the month, become effective at the beginning of the following month or, if filed after the fifteenth of the month, become effective on the first day of the next succeeding month. Any person who changes his or her election and becomes a contractor or repairperson shall pay the tax on all ~~tangible personal~~ property in inventory which may be ~~incorporated into~~ annexed to real estate at the time of making the change in election except when such contractor or repairperson elects to purchase inventory with a resale certificate. Any person who changes his or her election and becomes a retailer shall not be entitled to a refund but shall receive a credit for the tax paid on ~~tangible personal~~ property in inventory at the time the ~~tangible personal~~ property is sold. The credit shall be applied against the tax collected on sales of such ~~tangible personal~~ property.

Any contractor or repairperson who has not completed and filed an election as required in this section within three months after beginning to operate as a contractor or repairperson shall be considered a retailer for all periods until an election has been made.



Sec. 17. That section 77-2702.06, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.06. Engaged in business in this state shall mean any of the following:

(1) 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;

(2) 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;

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

(4) Soliciting retail sales of ~~tangible personal~~ property from residents of this state on a continuous, regular, or systematic basis by means of advertising which is broadcast from or relayed from a transmitter within this state or distributed from a location within this state;

(5) Soliciting orders from residents of this state for ~~tangible personal~~ property by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the retailer benefits from any banking, financing, debt collection, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities;

(6) Being owned or controlled by the same interests which own or control any retailer engaged in business in the same or similar line of business in this state; or

(7) Maintaining or having a franchisee or licensee operating under the retailer's trade name in this state if the franchisee or licensee is required to collect the tax under the Nebraska Revenue Act of 1967.

Sec. 18. That section 77-2702.07, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.07. (1) 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 retailers valued in money whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of ~~tangible personal~~ property sold. In accordance with rules and regulations adopted and promulgated by the Tax Commissioner, 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;

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

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

(d) The amount of any excise or property tax levied against the ~~tangible personal~~ property except as otherwise provided in the Nebraska Revenue Act of 1967; or

(e) The amount charged for warranties, guarantees, or maintenance agreements.

(2) Gross receipts of every person engaged as a public utility specified in this subsection or as a community antenna television service operator or any person involved in connecting and installing services defined in subdivision (2)(a), (b), or (d) of this section shall mean:

(a) In the furnishing of telephone communication service, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service. Gross receipts shall not mean the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service;

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

(c) 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

(d) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388.

Gross receipts shall also mean gross income received from the provision, installation, construction, servicing, or removal of ~~tangible personal~~ property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service specified in subdivision (2)(d) of this section. Gross receipts shall not mean gross income received from telephone directory advertising.

(3) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property shall mean:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller. Gross receipts shall not mean the amount charged for training customers in the use of

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

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge except the gross income received from videotape and film rentals, satellite programming, and satellite programming service when the sales tax or the admission tax is charged under the Nebraska Revenue Act of 1967.

(4) Gross receipts shall not include any of the following:

(a) Cash discounts allowed and taken on sales;

(b) The amount of any rebate granted by a motor vehicle manufacturer or dealer at the time of sale of the motor vehicle, which rebate functions as a discount from the sales price of the motor vehicle;

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

(d) ~~Except as provided in subsection (2) of this section, 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;~~

(e) 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;

(f) (e) 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;

(g) (f) 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; or

(h) (g) 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, if such conditional sale contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration.

Sec. 19. That section 77-2702.09, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.09. Occasional sale shall mean:

(1) A sale, but not a lease or rental, of ~~tangible personal~~ property which is the subject of any intercompany sale or transfer involving any parent, subsidiary, or brother-sister company relationship under section 77-2704.28 and which was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller or transferor directly or

indirectly has previously paid a sales or use tax thereon, including:

(a) From one corporation to another corporation pursuant to a reorganization. For purposes of 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;

(b) 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;

(c) To a corporation for the purpose of organization of such corporation or the contribution of additional capital to 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;

(d) 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

(e) 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; or

(f) Any transaction between two persons that qualifies as a tax-free transaction under the Internal Revenue Code of 1986, as amended;

(2) 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 section 77-2703:

(a) 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;

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

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

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

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

(3) Commencing with any transaction occurring on or after October 1, 1985, any sale of business or farm machinery and equipment if

each of the following conditions is met and if any one condition is not met the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) Such machinery or equipment was used by the seller or seller's predecessor in a sale described in subdivision (1) of this section as a depreciable capital asset in connection with the farm or business for a period of at least one year;

(b) Such property was originally acquired prior to June 1, 1967, or if acquired thereafter, the seller or seller's predecessor in a sale described in subdivision (1) of this section directly or indirectly has previously paid a sales or use tax thereon; and

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

(4) Commencing October 1, 1985, a sale ~~of tangible personal property~~ by an organization created exclusively for religious purposes or an agent of the organization for such sale 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 section 77-2703:

(a) All sales occur during an activity conducted by such organization or, if more than one organization is involved, by one of the organizations owning property being sold;

(b) The organization only sells property it owns during one such activity in a calendar year; and

(c) The activity does not last longer than three consecutive days; and

(5) Any sale ~~of tangible personal property~~ that is made in connection with the sale to a single buyer of all or substantially all ~~of the tangible personal property~~ of a trade or business if the seller or seller's predecessor in a sale described in subdivision (1) of this section directly or indirectly has previously paid a sales or use tax thereon. This subdivision shall apply to any transaction occurring on or after October 1, 1985.

Commencing October 1, 1985, occasional sale shall not include any sale ~~of tangible personal property~~ directly by or any sale which is supervised or aided by an auctioneer or an agent or employee of an auctioneer.

Except for a sale listed in subdivision (1) of this section, an occasional sale shall not mean any sale of motor vehicles, trailers, and semitrailers as defined in section 60-301.

Sec. 20. That section 77-2702.11, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.11. Purchase shall mean any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means, of ~~tangible personal~~ property for a consideration, including 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.

Sec. 21. That section 77-2702.12, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.12. 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 (1) the cost of the ~~tangible personal~~ property rented or leased, (2) the cost of material used, labor or service cost, interest charged, losses, or any other expenses, or (3) the cost of transportation of ~~tangible personal~~ property at any time. The total amount for which ~~tangible personal~~ property is rented or leased shall include 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.

Sec. 22. That section 77-2702.13, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.13. (1) 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 delivery person's selling price of the ~~tangible personal~~ property in his or her gross receipts;

(d) The sale of admissions which shall mean the right or privilege to have access to or to use a place or location. 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 (i) fees charged by elementary or secondary schools, public or private, (ii) fees charged by 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, or (iii) fees charged by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska

## Political Accountability and Disclosure Act;

(e) A sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate; and

(f) A sale of any ~~tangible—personal~~ property ~~incorporated into~~ annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2702.05 except when such ~~incorporation~~ annexation is incidental to the transfer of an improvement upon real estate or the real estate.

(2) Retail sale or sale at retail shall not mean:

(a) The sale of ~~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) The sale of:

(i) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life shall include live poultry or livestock on the hoof when sales are made by the grower, producer, feeder, or 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 include 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 for use in agriculture and applied to land or crops. Agricultural chemicals shall not mean chemicals applied to harvested grains stored in commercial elevators; or

(v) Oxygen for use in aquaculture as defined in section 2-3804.01;

(c) The sale of:

(i) Nonreturnable containers when sold without contents to persons who place contents in the container and sell the contents together with the container;

(ii) Containers when sold with contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by the Nebraska Revenue Act of 1967; and

(iii) Returnable containers when sold with contents in connection with a retail sale of the contents or when resold for refilling.

The term returnable containers shall mean containers of a kind customarily returned by the buyer of the contents for reuse. All



other containers are nonreturnable containers;

(d) The sale of ~~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) The sale of ~~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 outside this state, with title passing in this state, of materials and replacement parts used as or 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. All common or contract carrier exemption certificates shall expire on October 31, 1986, and on October 31 every three years thereafter. 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. The Tax Commissioner shall notify such exemption certificate holders at least sixty days prior to the expiration date of such certificate that their certificate will expire and be null and void as of such date; or

(g) The sale of railroad rolling stock whether purchased by a railroad or by any other person; or

(h) The sale of property annexed to real estate.

Sec. 23. That section 77-2702.14, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.14. (1) Retailer shall mean:

~~(1) (a) Any seller engaged in the business of making sales of tangible personal property for storage, use, or other consumption subject to tax under section 77-2703 or in the business of making sales subject to tax under section 77-2703 at auction of tangible personal property owned by the person or others, for storage, use, or other consumption. Retailer shall mean, in the case of sales at auction of tangible personal property when the person collecting the proceeds of the auction is not the auctioneer or an agent or employee of the auctioneer, the person collecting the proceeds of the auction, other than the owner of the tangible personal property, together with his or her principal, if any, and retailer shall not include the auctioneer in such case;~~

~~(2) Any person who leases or rents to another tangible personal property for storage, use, or other consumption except film rentals when an admission tax is charged under the Nebraska Revenue~~

~~Act of 1967 and railroad rolling stock interchanged pursuant to the provisions of the Interstate Commerce Act;~~

~~(3) Any 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 Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days, and such a person shall be and constitute a retail merchant with respect thereto and the gross income received therefrom shall constitute gross income of a retail merchant received from transactions constituting selling at retail;~~

~~(4) Any 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 subsection (2) of section 77-2702.07;~~

~~(5) Any person renting or otherwise furnishing tangible personal property under an agreement requiring the periodic cleaning or laundering of such tangible personal property;~~

~~(6) (b) Every person who has elected to be considered a retailer pursuant to subdivision (1) of section 77-2702.05; and~~

~~(7) (c) Every person operating, organizing, or promoting a flea market, craft show, fair, or similar event.~~

~~(2) Retailer shall not mean:~~

~~(a) Any person who leases or rents films when an admission tax is charged under the Nebraska Revenue Act of 1967 or railroad rolling stock interchanged pursuant to the provisions of the federal Interstate Commerce Act;~~

~~(b) Any person engaged in the business of furnishing rooms in 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 Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days; or~~

~~(c) Any person making sales at a Retailer shall not include any person making sales at such flea market, craft show, fair, or similar event who does not have a sales tax permit and who has arranged to pay sales taxes collected to the person operating, organizing, or promoting such event.~~

Sec. 24. That section 77-2702.15, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.15. Sale shall mean 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, of tangible personal property for a

consideration. Sale shall include:

(1) 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;

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

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

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

(5) 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

(6) 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 Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days.

Sec. 25. That section 77-2702.16, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.16. 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 contractor or repairperson electing to be taxed as a retailer under subdivision (1) of section 77-2702.05, to a contractor or repairperson being taxed as the consumer of ~~tangible-personal~~ property and electing a tax-free inventory under subdivision (3) of section 77-2702.05, or to a purchaser for the sole purpose of that purchaser 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 the Nebraska Revenue Act of 1967 but not if incidental to the renting or leasing of real estate.

Sec. 26. That section 77-2702.17, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.17. (1) 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:

(a) The cost of the ~~tangible-personal~~ property sold;

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

(c) The cost of transportation of the ~~tangible personal~~ property. The total amount for which ~~tangible personal~~ property is sold shall include any services which are a part of the sale and any amount for which credit is given to the purchaser by the seller;

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

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

(2) Sales price shall not mean any of the following:

(a) Cash discounts allowed and taken on sales;

(b) The amount of any rebate granted by a motor vehicle manufacturer or dealer at the time of sale of the motor vehicle, which rebate functions as a discount from the sales price of the motor vehicle;

(c) The amount refunded for ~~tangible personal~~ property returned by customers when all or part of the amount charged therefor is refunded either in cash or credit;

(d) ~~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;~~

(e) 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;

(f) (e) 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;

(g) (f) 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

(h) (g) The amount charged for labor or services rendered in annexing ~~incorporating tangible personal~~ property to into real estate.

Sec. 27. That section 77-2702.18, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.18. 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.

Sec. 28. That section 77-2702.19, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.19. (1) 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.

(2) Except for a transaction that is subject to sales tax under the Nebraska Revenue Act of 1967, storage shall not 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.

Sec. 29. For purposes of the Nebraska Revenue Act of 1967, an item of property shall be deemed to be annexed to real estate or other property annexed to real estate if (1) the property becomes real estate or (2) the installation or removal of the property requires specialized skills or tools and is performed or supervised by a recognized trade professional as determined by the Department of Revenue by rule and regulation.

Sec. 30. That section 77-2702.23, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.23. (1) 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 use shall not include the sale of that ~~tangible personal~~ property in the regular course of business or the exercise of any right or power over ~~tangible personal~~ property which will enter into or become an ingredient or component part of ~~tangible personal~~ property manufactured, processed, or fabricated for ultimate sale at retail. Use specifically shall include the ~~incorporation of tangible personal~~ annexation of property to real estate or the withdrawal of ~~tangible personal~~ property from inventory, which inventory is subject to sales tax under the Nebraska Revenue Act of 1967 or would be subject to the sales tax under the act except for an election under section 77-2702.05, for ~~incorporation into~~ annexation to real estate or ~~into to~~ improvements upon real estate without regard to the fact that such property is manufactured, processed, or fabricated prior to annexation or that such real estate and improvements may subsequently be sold as such.

(2) Except for a transaction that is subject to sales tax under the Nebraska Revenue Act of 1967, use shall not 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~~ annexed to other ~~tangible personal~~ property to be transported outside the state and thereafter used solely outside the state.

Sec. 31. (1) Maintenance agreement shall mean any

contract or agreement to provide or pay for the maintenance, repair, or refurbishing of an item, the sale of which is subject to tax under section 77-2703, for a stated period of time or interval of use. Maintenance agreement shall include any such agreement whether or not the agreement requires additional payments for some or all of the parts or services provided under the agreement. Maintenance agreement shall include contracts or agreements designated as warranties, extended warranties, guarantees, service agreements, maintenance agreements, or any similar term.

(2) Maintenance agreement shall not include any contract or agreement subject to the premium tax under Chapter 77, article 9, from a service contract business operating with a certificate of authority from the Department of Insurance.

(3) The selling price of a maintenance agreement shall not have to be separately stated and may be included as a part of the selling price of the item covered.

Sec. 32. Property shall mean all tangible and intangible property that is subject to tax under subsection (1) of section 77-2703 and all rights, licenses, and franchises that are subject to tax under such subsection.

Sec. 33. That section 77-2703, Revised Statutes Supplement, 1992, as amended by section 26, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 45, Legislative Bill 112, Ninety-third Legislature, First Session, 1993, be amended to read as follows:

77-2703. (1) There is hereby imposed a tax at the rate provided in section 77-2701.02 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 any person involved in the connecting and installing of the services defined in subdivision (2)(a), (b), or (d) of section 77-2702.07, or as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 77-2702.07, the gross receipts from the sale of admissions in this state, and the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section. When there is a sale, 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 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 this state.

(b) It is unlawful for any retailer to advertise, hold out, or 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, 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.

(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.

(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 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, except 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.

(e) The use of tokens or stamps for the purpose of collecting or enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of 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.

~~(g) Whenever any retailer makes 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 percent of the total price paid prior to June 1, 1967, and such delivery is made prior to August 31, 1967.~~

~~(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 except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. 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 prescribes; 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.

~~(f) 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.~~

(g) (h) The tax imposed by 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, with the exception of motor vehicles, trailers, and semitrailers registered pursuant to section 60-305.09, the tax shall be collected by the county treasurer or designated county official as provided in section 60-302 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. The tax imposed by this section on motor vehicles, trailers, and semitrailers registered pursuant to section 60-305.09 shall be collected by the Department of Motor Vehicles 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 under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, 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. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. 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 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 thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer, the designated county official, or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer, designated county official, or Department of Motor Vehicles shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue act of 1967. The county treasurer, designated county official, or Department of Motor Vehicles 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~~ by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The Department of Motor Vehicles shall deduct, withhold, and deposit in the Interstate Registration Operations Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer, designated county official, or Department of Motor Vehicles violates any rule or regulation pertaining to the collection of the use tax.

(\*) (i) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by 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 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 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 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 shall be 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 shall not be 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 the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be 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 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 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 two and one-half

percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month as reimbursement for the cost of collecting the tax, except that for each month from October 1, 1991, to September 30, 1992, such collectors shall deduct and withhold from the amount of taxes collected three percent of the first five thousand dollars remitted each month and one percent of all amounts in excess of five thousand dollars remitted each month as reimbursement for the cost of collecting the tax and for each month from April 1, 1993, to March 31, 1994, such collectors shall deduct and withhold from the amount of taxes collected three-quarters of one percent of the first two thousand dollars remitted each month and one-quarter of one percent of all amounts in excess of two thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any 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 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.

(g)(i) Except as provided in subdivisions (g)(ii), ~~and (g)(iii), and (g)(iv)~~ of this subsection, when a person purchases ~~tangible personal~~ property in another state, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country with the intent of using such property in such other state, commonwealth, territory, possession, or country and such property is actually used in the other state, commonwealth, territory, possession, or country for its intended purpose, the ~~tangible personal~~ property shall not be subject to tax in this state.

(ii) Subdivision (g)(i) of this subsection shall only apply to a motor vehicle, trailer, or semitrailer as defined in section 60-301 when it is licensed for operation on the highways of the other state, commonwealth, territory, possession, or country prior to being brought into this state.

(iii) Subdivision (g)(i) of this subsection shall not apply to an aircraft which is brought into this state within one year of purchase and (A) is regularly based within this state or (B) more than one-half of the aircraft's operating hours are within this state.

For purposes of subdivision (g)(iii) of this subsection, operation of the aircraft for the purpose of maintenance, repair, or fabrication with subsequent removal from this state upon completion of

such maintenance, repair, or fabrication shall not be considered operating hours.

(iv) Subdivision (g)(i) of this subsection shall not apply to any property that is manufactured, processed, or fabricated in another state and that is not used for its intended purpose in the other state after its manufacture, processing, or fabrication.

Sec. 34. That section 77-2704.02, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.02. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of ~~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 Nebraska.

Sec. 35. That section 77-2704.05, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.05. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of motor vehicle fuels as defined, taxed, or exempted under Chapter 66, article 4, special fuels as ~~defined, taxed, or exempted~~ for use on the highways under Chapter 66, article 6, ~~and~~ special fuels used to provide motive power for railroad rolling stock, and special fuels delivered into the fuel supply tanks of other vehicles.

Sec. 36. That section 77-2704.06, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.06. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of ~~tangible personal~~ property used for the performance of a written contract entered into prior to June 1, 1967, ~~except as provided in subdivision (1)(c) of section 77-2703.~~

Sec. 37. That section 77-2704.07, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.07. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of (1) any newspaper regularly issued at average intervals not exceeding one week if such newspaper contains matters of general interest and reports of current events or (2) any newspaper advertising supplement distributed with any newspaper regardless of whether or not the retailer takes possession of the supplement from the printer before delivery of the supplement is made to the newspaper.

Sec. 38. That section 77-2704.08, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.08. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of 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.

Sec. 39. That section 77-2704.09, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.09. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of insulin and the following when sold for a patient's use under a prescription written by a person licensed under Chapter 71, article 1: Prescription medicines; prescription medicines when prescribed and dispensed for human use by a person licensed under the provisions of Chapter 71, article 1, insulin; durable medical equipment; ; home medical supplies; ; prosthetic and devices; orthotic devices; ; and oxygen; and any oxygen equipment, for a patient's use under a doctor's prescription.

(2) For purposes of this section:

(a) Durable medical equipment shall mean equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is appropriate for use in the home;

(b) Home medical supplies shall mean supplies primarily and customarily used to serve a medical purpose which are appropriate for use in the home and are generally not useful to a person in the absence of illness or injury;

(c) Orthotic devices shall mean devices which are used to support, or limit the movement of, parts of the body to serve a medical purpose and generally are not useful to a person in the absence of illness or injury;

(d) Oxygen equipment shall mean oxygen cylinders, cylinder transport devices including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories; and

(d) (e) Prosthetic ~~and orthotic~~ devices shall mean devices which permanently or temporarily replace a missing part or a nonfunctioning part of the human body and shall include any supplies used with such devices.

Sec. 40. That section 77-2704.10, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.10. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) 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;

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

(3) 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; ~~and~~

(4) Meals and food products, including soft drinks and candy, for human consumption when sold at a political event by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act.

Sec. 41. That section 77-2704.11, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.11. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of ~~tangible personal~~ property which is shipped to a point outside this state, when the contract of sale is expressly or impliedly contingent upon 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. Such exemption shall include the amount charged for fabrication of ~~tangible personal~~ property furnished by the customer which is fabricated in this state and then shipped by the retailer performing the fabrication to a point outside of this state. This shall also 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.

Sec. 42. That section 77-2704.12, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.12. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any private educational institution established under Chapter 79, article 17, any private college or



university established under Chapter 85, article 11, 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, intermediate care facility, or nursing facility 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.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) 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~~ annexed to the structure and becomes the property of the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any ~~tangible personal property incorporated into~~ property annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items ~~incorporated into~~ annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to ~~purchasing tangible personal property to be incorporated into~~ property being annexed to real estate in 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~~ annexed to real estate in the construction, improvement, or repair.

(5) 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 subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which ~~tangible personal~~ property is ~~incorporated into a structure~~ annexed to real estate and becomes the property of the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, 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~~ annexed to real estate in the construction, improvement, or repair.

Sec. 43. That section 77-2704.13, Revised Statutes Supplement, 1992, as amended by section 27, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, be amended to read as follows:

77-2704.13. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane when more than fifty percent of the amount purchased is for use directly in irrigation or farming; and

(2) Sales and purchases of such energy sources or fuels made before April 1, 1993, or after March 31, 1994, when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining ~~tangible personal~~ property, in the generation of electricity, or by any hospital. The state tax paid on purchases of such energy sources or fuels during the period beginning April 1, 1993, and ending March 31, 1994, shall not exceed one hundred thousand dollars for any one location when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining of ~~tangible personal~~ property or by any hospital. All purchases of such energy sources or fuels for use in the generation of electricity during the period beginning April 1, 1993, and ending March 31, 1994, shall be taxable. Any taxpayer who has paid the limit of state tax on such energy sources or fuels at one location shall be exempt on all other qualifying purchases at such location. Such taxpayer shall be entitled to a refund of any amount of state or local option tax paid on an energy source or fuel exempt under this subdivision. A refund shall be made pursuant to section 77-2708.

Sec. 44. That section 77-2704.15, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.15. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public 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, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools established under Chapter 79.

(2) 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~~ annexed to the structure and becomes the

property of the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to ~~purchasing any tangible personal property incorporated into~~ having any property annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items ~~incorporated into~~ annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

(3) Any governmental unit listed in subsection (1) of this section, except the state, which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to ~~purchasing tangible personal property to be incorporated into~~ property being annexed to real estate in 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~~ annexed to real estate in the construction, improvement, or repair.

Sec. 45. That section 77-2704.24, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.24. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of 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. For purposes of this section, food shall not include meals or other food prepared for immediate consumption on or off the premises of the retailer and shall not include foods sold through vending machines.

Sec. 46. That section 77-2704.25, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.25. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of ~~tangible personal~~ property, except meals for human consumption, sold by parent-booster clubs, parent-teacher associations, parent-teacher-student associations, or school-operated stores approved by an elementary or secondary school, public or private, if the proceeds from such sale are used to support school activities or the school itself.

Sec. 47. That section 77-2704.28, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.28. 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 the Nebraska Revenue Act of 1967 if such property was

either originally acquired prior to June 1, 1967, or if acquired thereafter, the seller or transferor directly or indirectly has previously paid a sales or use tax thereon. 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.

Sec. 48. That section 77-2704.29, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.29. 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.

Sec. 49. That section 77-2704.30, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.30. The use tax imposed in the Nebraska Revenue Act of 1967 shall not apply to:

(1) 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

(2) 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.

Sec. 50. That section 77-2704.31, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.31. 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 sections 77-2703 and 77-27142, the provision of this section shall apply, but at a rate measured by the difference only between the rate imposed by such sections 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 such sections, 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.

Sec. 51. That section 77-2704.32, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.32. When a written contract exists for a construction, alteration, or improvement project outside the United States or its territories or possessions, a contractor may apply for a refund of the sales and use tax paid to the State of Nebraska on ~~tangible personal~~ property actually ~~incorporated into~~ annexed to real estate in the project

outside of the United States or its territories or possessions.

Sec. 52. That section 77-2704.33, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.33. 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 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~~ annexed to real estate in 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. Failure by a contractor to pay the decreased sales tax amount as provided in this section shall be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

Sec. 53. That section 77-2704.35, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2704.35. When the Tax Commissioner determines that it is necessary for the efficient administration of the Nebraska Revenue Act of 1967 to regard any 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 the Nebraska Revenue Act of 1967.

Sec. 54. That section 77-2705, Revised Statutes Supplement, 1992, be amended to read as follows:

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

- (a) The name and address of all agents operating in this state;
- (b) The location of all distribution or sales houses or offices or other places of business in this state; and
- (c) Such other information as the Tax Commissioner may require.

(2) Every person furnishing public utility service as defined in subsection (2) of section 77-2702.07 shall register with the Tax

Commissioner and give:

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

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

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

(4) Every application for a permit shall:

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

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

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

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

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

(6)(a) Whenever the holder of a permit fails to comply with any provision of the Nebraska Revenue Act of 1967 relating to the retail sales tax or with any rule or regulation of the Tax Commissioner relating to such tax prescribed and adopted under such act, the Tax Commissioner upon hearing, after giving the person twenty days' notice in writing specifying the time and place of hearing and requiring him or her to show cause why his or her permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The Tax Commissioner shall give to the person written notice of the suspension or revocation of any of his or her permits. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(b) The Tax Commissioner shall have the power to restore permits which have been revoked but shall not issue a new permit after the revocation of a permit unless he or she is satisfied that the former

holder of the permit will comply with the provisions of such act relating to the retail sales tax and the regulations of the Tax Commissioner. A seller whose permit has been previously suspended or revoked shall pay the Tax Commissioner a fee of twenty-five dollars for the renewal or issuance of a permit in the event of a first revocation and fifty dollars for renewal after each successive revocation.

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

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

(8) If any person, firm, corporation, association, or agent thereof presents an exempt sale certificate to the seller for ~~tangible personal~~ property which is purchased by a taxpayer or for a use other than those enumerated in the Nebraska Revenue Act of 1967 as exempted from the computation of sales and use taxes, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from the purchaser or the agent thereof a penalty of one hundred dollars or ten times the tax, whichever amount is larger, for each instance of such presentation and misuse of an exempt sale certificate. Such amount shall be in addition to any tax, interest, or penalty otherwise imposed.

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

Sec. 55. That section 77-2706, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

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

(4) Any person who gives a resale certificate to the seller for ~~tangible personal~~ property which he or she knows, at the time of



purchase, is purchased for the purpose of use rather than for the purpose of resale, lease, or rental by him or her in the regular course of business and each officer of any corporation which so gives a resale certificate shall be guilty of a misdemeanor.

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

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

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

Any report, name, or information which is supplied to the Tax Commissioner regarding a violation specified in this section, including

the identity of the informer, shall be subject to the pertinent provisions regarding wrongful disclosure in section 77-2711.

Sec. 56. That section 77-2708, Revised Statutes Supplement, 1992, as amended by section 28, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, 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 shall by rule and regulation require reports and tax payments from sellers, retailers, or purchasers depending on their yearly tax liability. Annual returns shall be required if such sellers', retailers', or purchasers' yearly tax liability is less than nine hundred dollars, quarterly returns shall be required if their yearly tax liability is nine hundred dollars or more and less than twelve hundred dollars, and monthly returns shall be required if their yearly tax liability is twelve hundred dollars or more. The Tax Commissioner shall have the discretion to allow an annual return for seasonal retailers, even when their yearly tax liability exceeds the amounts listed in this subdivision.

The Tax Commissioner may adopt and promulgate rules and regulations to allow annual, semiannual, or quarterly returns for any retailer making monthly remittances or payments of sales and use taxes by electronic funds transfer. Such rules and regulations may establish a method of determining the amount of the payment that will result in substantially all of the tax liability being paid each quarter. At least once each year, the difference between the amount paid and the amount due shall be reconciled. If the difference is more than ten percent of the amount paid, a penalty of fifty percent of the unpaid amount shall be imposed.

(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 percent 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 ~~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, in addition to interest, of ten percent of the amount of tax not paid by the required filing date or twenty-five ~~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, two and one-half

percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax, except that for each month from October 1, 1991, to September 30, 1992, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, three percent of the first five thousand dollars remitted each month and one percent of all amounts in excess of five thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax and for each month from April 1, 1993, to March 31, 1994, the taxpayer shall deduct and withhold from the amount of taxes collected three-quarters of one percent of the first two thousand dollars remitted each month and one-quarter of one percent of all amounts in excess of two thousand dollars remitted each month as reimbursement 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, has been erroneously or illegally collected or computed, was paid on a purchase made before May 29, 1987, which purchase qualified for a refund under section 77-27,186 at the time of purchase, or was paid on agricultural machinery or equipment which qualifies for a refund under section 77-2708.01, 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 on forms prescribed by the Tax Commissioner and shall state the specific amount and grounds upon which the claim is founded. No refund shall be made in any amount less than two dollars.

(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 5 of this act, as such rate may from time to time be adjusted, 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 77-2708.01 or 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 by issuing a deficiency determination 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 or within the period otherwise allowed for issuing a deficiency determination, whichever expires later.

~~(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, proof, trials, and appeals shall be applicable to the proceedings.~~

(l) (i) 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. 57. That section 77-2708.01, Revised Statutes Supplement, 1992, as amended by section 29, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, be amended to read as follows:

77-2708.01. (1)(a) Any purchaser of depreciable agricultural machinery or equipment purchased on or after January 1, 1992, and before January 1, 1993, for use in commercial agriculture may apply for a refund of all of the Nebraska sales or use taxes and all of the local option sales or use taxes paid on the machinery or equipment.

(b) On or after January 1, 1993, any purchaser of depreciable repairs or parts for agricultural machinery or equipment used in commercial agriculture may apply for a refund of all of the Nebraska sales or use taxes and all of the local option sales or use taxes paid on the repairs or parts.

(2) The purchaser shall file a claim within three years after the date of purchase with the Tax Commissioner pursuant to section 77-2708. The information provided on a tax refund claim allowed under this section may be disclosed to any other tax official of this state.

Sec. 58. That section 77-2709, Reissue Revised Statutes of Nebraska, 1943, as amended by section 30, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, 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 percent 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 percent 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 5 of this act, as such rate may from time to time be adjusted, from the ~~last day~~ twenty-fifth 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 the Nebraska Revenue Act of 1967 or authorized rules and regulations, a penalty of twenty-five percent 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.

(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 Nebraska Revenue Act of 1967, the service is complete at the time of deposit in the United States post office.

(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~~ in this section 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 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 percent 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. 59. That section 77-2709.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2709.01. The Tax Commissioner shall not include in any notice of deficiency determination issued for a period prior to January 1, 1990, any amount for tax on ~~tangible personal~~ property incorporated into real estate on which a sales tax has been collected by a contractor or repairperson and which has not been refunded. Such sales tax shall be considered as properly paid tax and shall not be refunded except as specifically allowed in some other provision of the Nebraska Revenue Act of 1967.

Sec. 60. That section 77-2711, Revised Statutes Supplement, 1992, as amended by section 31, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, be amended to read as follows:

77-2711. (1)(a) The Tax Commissioner shall enforce sections 77-2702.03 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

(b) The Tax Commissioner may prescribe the extent to

which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

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

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

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling ~~tangible personal~~ property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

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

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

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

representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, ~~or~~ other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered; by the Attorney General; to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced. (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, ~~or~~ (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, or (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to 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.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2702.03 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of such act, but may not waive the minimum interest on delinquent taxes specified in section 5 of this act, as such rate may from time to time be adjusted, except interest on use taxes voluntarily reported by an individual.

Sec. 61. That section 77-2753, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2753. (1) Every employer and payor maintaining an

office or transacting business within this state and making payment of any wages or other payments as defined in subsection (5) of this section which are taxable under the Nebraska Revenue Act of 1967 to any individual shall deduct and withhold from such wages for each payroll period and from such payments a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules and regulations of the Tax Commissioner. Such rules and regulations may allow withholding to be computed at a percentage of the federal withholding for gambling winnings or supplemental payments, including bonuses, commissions, overtime pay, and sales awards which are not paid at the same time as other wages.

(2)(a) Every payor who is either (i) making a payment or payments in excess of five thousand dollars or (ii) maintaining an office or transacting business within this state and making a payment or payments related to such business in excess of six hundred dollars, and such payment or payments are for personal services performed or to be performed substantially within this state, to a nonresident individual, other than an employee, who is not subject to withholding on such payment under the Internal Revenue Code or a corporation or partnership described in subdivision (c) of this subsection, shall be deemed an employer, and the individual performing the personal services shall be deemed an employee for the purposes of this section. The payor shall deduct and withhold from such payments the percentage of such payments prescribed in subdivision (b) of this subsection. If the individual performing the personal services provides the payor with a statement of the expenses reasonably related to the personal services, the total payment or payments may be reduced by the total expenses before computing the amount to deduct and withhold, except that such reduction shall not be more than fifty percent of such payment or payments.

(b) For any payment or payments for the same service, award, or purse that totals less than twenty-eight thousand dollars, the percentage deducted from such payment or payments pursuant to this subsection shall be ~~three and fifteen hundredths~~ four percent, and for all other payments, the percentage shall be ~~five~~ six percent.

(c) For any corporation or partnership that receives compensation for personal services in this state and of which all or substantially all of the shareholders or partners are the individuals performing the personal services, including, but not limited to, individual athletes, entertainers, performers, or public speakers performing such personal services, such compensation shall be deemed wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967.

(d) The withholding required by this subsection shall not

apply to any payment to a nonresident alien, corporation, or partnership if such individual, shareholder, or partner provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States.

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

(4) The Tax Commissioner shall enter into an agreement with the United States Office of Personnel Management for the withholding of income tax imposed on individuals by the Nebraska Revenue Act of 1967 on civil service annuity payments for those recipients who voluntarily request withholding. The agreement shall be pursuant to 5 U.S.C. 8345 and the rules and regulations adopted and promulgated by the Tax Commissioner.

(5) Wages and other payments subject to withholding shall mean payments that are subject to withholding under the Internal Revenue Code of 1986 and are (a) payments made by employers to employees, except such payments subject to 26 U.S.C. 3405 or 3406, (b) payments of gambling winnings, or (c) pension or annuity payments when the recipient has requested the payor to withhold from such payments.

Sec. 62. That section 77-2775, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2775. (1) If the amount of a taxpayer's federal adjusted gross income, taxable income, or tax liability reported on his or her federal income tax return for any taxable year is changed or corrected by the Internal Revenue Service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal adjusted gross income, taxable income, or tax liability within ninety days after the final determination of such change, correction, or renegotiation and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended income tax return under the Nebraska Revenue Act of 1967 and shall give such information as the Tax Commissioner may require.

(2) Whenever the amount of a taxpayer's income which is taxable in any state for any taxable year or any tax credits allowable in such state are changed or corrected in a way material to the tax liability

owed to this state by the agency having authority to examine returns filed with such state or any other competent authority or whenever an amended return is filed by any taxpayer with a change or correction material to the tax liability owed to this state with another state, such change or correction shall be reported to the Tax Commissioner within ninety days after the final change or correction or filing of the amended return. The Tax Commissioner shall by rule and regulation provide the nature of any change or correction which must be reported and the form and contents of such report. The reports shall concede the accuracy of such determination or state why it is erroneous. This subsection shall apply to changes or corrections which become final on or after May 1, 1993.

Sec. 63. That section 77-2777, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2777. Ninety days after the date on which it was mailed, ~~or~~ one hundred fifty days if the taxpayer is outside the United States, or thirty days if the amount of the deficiency relates to tax withheld or required to be withheld by an employer or payor, a notice of proposed assessment of a deficiency shall constitute a final assessment of the amount of tax specified together with interest, additions to tax, and penalties except only for such amounts as to which the taxpayer has filed a protest with the Tax Commissioner.

Sec. 64. That section 77-2778, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2778. Within ninety days after the mailing of a deficiency notice, ~~or~~ one hundred fifty days if the taxpayer is outside the United States, or thirty days if the amount of the deficiency relates to tax withheld or required to be withheld by an employer or payor, ~~after the mailing of a deficiency notice~~, the taxpayer or any person directly interested may file with the Tax Commissioner a written protest against the proposed assessment in which he or she shall set forth the grounds on which the protest is based. If a protest is filed, the Tax Commissioner shall reconsider the assessment of the deficiency and, if the taxpayer has so requested, shall grant the taxpayer or his or her authorized representative an oral hearing. For purposes of this section, a person shall be directly interested in a deficiency determination when such deficiency could be collected from such person.

Sec. 65. That section 77-2780, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2780. The action of the Tax Commissioner on the taxpayer's protest is shall be final upon the expiration of ninety days, or thirty days if the amount assessed relates to tax withheld or required to be withheld by an employer or payor, from the date when ~~he~~ the Tax Commissioner mails notice of his or her action to the taxpayer unless within this period the taxpayer seeks review of the Tax Commissioner's determination as provided in the Nebraska Revenue Act of 1967.

Sec. 66. That section 77-2785, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2785. (1) The amount of income tax which is shown to

be due on an income tax return, including revisions for mathematical errors, shall be deemed to be assessed on the date of filing of the return including any amended returns showing an increase of tax. In the case of a return properly filed without the computation of the tax, the tax computed by the Tax Commissioner shall be deemed to be assessed on the date when payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date provided in section 77-2777 if no protest is filed or, if a protest is filed, then upon the date when the determination of the Tax Commissioner becomes final. If an amended return or report filed pursuant to the provisions of section 77-2775 concedes the accuracy of a federal change or correction or a state change or correction which has become final on or after May 1, 1993, any deficiency in the income tax under the Nebraska Revenue Act of 1967 resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return and such assessment shall be timely notwithstanding any other provisions of such act. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment notwithstanding any other provision of such act.

(2) If the mode or time for the assessment of income tax under the provisions of the Nebraska Revenue Act of 1967, including interest, additions to tax, and penalties, is not otherwise provided for, the Tax Commissioner may establish the same by regulation.

(3) The Tax Commissioner may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section 77-2776 ~~where~~ when applicable, whenever it is found that any assessment is imperfect or incomplete in any material aspect.

(4) If the Tax Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, by the frivolous objections of any person to compliance with the Nebraska Revenue Act of 1967, or by the attempt of any person to impede the administration of such sections, he or she shall, notwithstanding the provisions of section 77-2786, immediately assess such tax, including interest and additions to tax, and penalties as provided by law and give notice and demand for payment to such person. When an assessment is made under this subsection, collection proceedings may be stayed by application for review and the posting of such security as may be required by the Tax Commissioner under section 77-27,129.

Sec. 67. That section 77-2786, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2786. (1) Except as otherwise provided in the Nebraska Revenue Act of 1967, a notice of a proposed deficiency determination shall be mailed to the taxpayer within three years after the return was filed. Except as otherwise provided in the Nebraska Revenue Act of 1967, 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



determination is mailed within three years after the return was filed or the period otherwise fixed.

(2) If the taxpayer omits from Nebraska taxable income an amount properly includable therein which is in excess of twenty-five percent of the amount of 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 deficiency determination may be mailed to the taxpayer within six years after the return was filed. A notice of deficiency determination 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 Nebraska 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 the Nebraska Revenue Act of 1967, a notice of deficiency determination 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 adjusted gross income, taxable income, or tax liability; or a change or correction which is treated in the same manner as if it were a deficiency determination for federal income tax purposes, or by not reporting a change or correction which has become final on or after May 1, 1993, in income taxable in or tax credit allowable by any state to the extent required by the Tax Commissioner by regulation, or in not filing an amended return, a notice of deficiency determination 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 section 77-2775, ~~report a~~ reports a federal change or correction, ~~file or a state change or correction which has become final on or after May 1, 1993, files an~~ amended return increasing his or her federal adjusted gross income, taxable income, or tax liability, or ~~report~~ reports a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, 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 adjusted gross income, taxable income, or 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) 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 ~~shall~~ have consented in writing to the mailing after such time, the notice of deficiency determination may be mailed 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 the mailing of a notice of deficiency determination of federal income taxes shall constitute an agreement with the Tax Commissioner to extend the period for assessment of income taxes under the Nebraska Revenue Act of 1967 through the ending date shown on the federal agreement. 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 determination 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 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 the mailing of a notice of deficiency determination 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 determination.

Sec. 68. That section 77-2789, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2789. (1) In case of failure to file any income tax return required under the provisions of the Nebraska Revenue Act of 1967 on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is the result of reasonable cause and not the result of willful neglect, the Tax Commissioner may add to the amount required to be shown as tax on such return, five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) In case of each failure to file a statement of payment to another person, including the duplicate statement of tax withheld on wages, on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is the result of reasonable cause and not willful neglect, the Tax Commissioner may assess a penalty against the person so failing to file the statement, in the amount of two dollars for each statement not so filed but the total amount imposed on the delinquent person for all such failure during any calendar year shall not exceed two thousand dollars.

(3) In case of failure to file any return for income tax withheld on the date prescribed therefor, determined with regard to any extension of time to file, the Tax Commissioner may add to the amount required to be shown as tax on such return twenty-five dollars or the amount determined under subsection (1) of this section, whichever is greater.

Sec. 69. That section 77-2790, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2790. (1) If any part of a deficiency is the result of negligence or intentional disregard of rules and regulations but without intent to defraud, the Tax Commissioner may add to the tax an amount equal to five percent 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 percent 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 the Nebraska Revenue Act of 1967 or the payment thereof, fails to make a return and pay a tax withheld by him or her at the time required by or under 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 the act for the collection of income tax against a taxpayer.

(5) If any person required to collect, withhold, truthfully account for, and pay over the income tax imposed by the Nebraska Revenue Act of 1967 willfully fails to collect or withhold 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, not withheld, 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 fails to pay, or to deduct or withhold and pay, any income tax, 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 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~~ fails to pay over any tax due and owing under such act; † (b) fails to file any return required under such act; † 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) The additions to the income tax and penalties relating thereto provided by the 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 such act to income tax or the tax imposed by the 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.

(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.

(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 rules and 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 percent of the tax due. Such amount shall be in addition to any other penalty, tax, or interest otherwise imposed by law for such noncompliance.

(13) If any nonresident individual provides false information or statements to an employer or payor regarding the portion of his or her wages or payments that are subject to withholding for this state which if used would result in the amount withheld being less than seventy-five percent of his or her income tax liability on such wages or payments or if any employer or payor uses such information when the employer or payor knows such information is false or maintains records which show such information is false, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from such individual, payor, or employer the penalties provided in subsections (5) and (6) of this section.

Sec. 70. 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 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 later. 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 such return was filed prior to the end of the extension of time. 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 subsection (1) of section 77-2775 to report a change or correction in federal adjusted gross income, taxable income, or tax liability 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, a 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 required by section 77-2775, 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 a taxpayer is required by subsection (2) of section 77-2775 to report a change or correction in the amount of income taxable or tax credit allowable in one or more states and such changes or corrections when reflected in the return filed under the Nebraska Revenue Act of 1967 as most recently amended would result in an overpayment of tax, a claim for credit or refund shall be filed by the taxpayer within the earlier of (a) 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 or (b) ten years from the due date of the return. If the report or amended return is not filed within the ninety-day period specified in such subsection, 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 lesser of (i) the reduction in tax attributable to the change



or correction in the amount of income taxable or the credit allowable in such other state in the return filed under the Nebraska Revenue Act of 1967 or (ii) the increase in tax actually paid to such other state or states. 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. This subsection shall apply to changes or corrections which become final on or after May 1, 1993.

(6) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback derived from or connected with Nebraska sources, the claim may be made under rules and regulations prescribed by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States.

(6) (7) 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. 71. That section 77-2794, Revised Statutes Supplement, 1992, as amended by section 38, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, be amended to read as follows:

77-2794. (1) Under regulations prescribed by the Tax Commissioner interest shall be allowed and paid at the rate specified in section 5 of this act, as such rate may from time to time be adjusted, upon any overpayment in respect to the income tax imposed by the Nebraska Revenue Act of 1967.

(2) For purposes of this section:

(a) The date of overpayment shall be the last day prescribed for filing the original return of such tax;

(b) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day determined without regard to any extension of time granted the taxpayer; ~~and~~

~~(b)~~ (c) Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer;

(d) Beginning May 1, 1993, if at the time an overpayment is to be refunded, the taxpayer also has a reported underpayment of the same tax in another year;

(i) If the overpayment is for a taxable year ending before the year of underpayment, the overpayment shall be applied to reduce such underpayment as of the last day prescribed for filing the original return of such tax for the year of underpayment; or

(ii) If the overpayment is for a taxable year ending after the year of underpayment, the overpayment shall be applied to reduce such



underpayment as of the last day prescribed for filing the original return of such tax for the year of overpayment; and interest shall be allowed for any remaining overpayment as provided in subdivision (a) of this subsection; and

(c) Beginning May 1, 1993, the period of overpayment during which interest shall be allowed shall not include any period during which the overpayment continued due to the unreasonable delay by the taxpayer in filing the claim for refund. For this purpose, the burden of proof shall be on the taxpayer to show that a delay of more than ninety days after all of the facts required to prepare a correct claim for refund are available is not unreasonable.

(3) If any overpayment of income tax imposed by the Nebraska Revenue Act of 1967 is refunded within ninety days after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within ninety days after any original return, ~~including any amended return~~, and any amended return filed to carry back a loss was filed, whichever is later, no interest shall be allowed under this section on overpayment. In the case of amended returns filed for any reason other than to carry back a loss, interest shall be allowed as provided in subsection (1) of this section.

Sec. 72. That section 77-27,119, Revised Statutes Supplement, 1992, 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, to adopt and promulgate 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 such sections, 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. 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. 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 school district is located. The Tax Commissioner shall adopt and 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 and shall be used for the school district identification required by subdivision (a) of this subsection.

(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 such taxpayer's correct social security number or state identification number and the school district identification number of the school district in which the taxpayer resides 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, for the purpose of determining corporate income, 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 or affirmations to such person or persons.

(4) The time and place of examination pursuant to 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 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 such sections 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 in this section shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, 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, or a county attorney of the report or return of any taxpayer who brings an action to review the tax based thereon, ~~or~~ against whom an action or proceeding for collection of tax has been instituted, or against whom an action, proceeding, or prosecution for failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) to prohibit furnishing to the Nebraska Workers' Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, (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, (f) to prohibit the disclosure of information pursuant to section 77-4110, or (g) to prohibit the disclosure to the Public Employees Retirement Board of the addresses of individuals who are members of the retirement systems administered by the board, and such information shall be furnished to the board solely for purposes of its administration of the retirement systems upon written request, which request shall include the name and social security number of each individual for whom an address is requested. Any person who violates 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 and shall be assessed the 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 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 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 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)(a) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts, make tax returns and tax return information open to inspection by or disclosure to officers and employees of the Auditor of Public Accounts for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 84-304. The Auditor of Public Accounts shall statistically and randomly select the tax returns and tax return information to be audited based upon a computer tape provided by the Department of Revenue which contains only total population documents without specific identification of taxpayers. The Tax Commissioner shall have the authority to approve the statistical sampling method used by the Auditor of Public Accounts. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No officer or employee of the Auditor of Public Accounts shall disclose to any person, other than another officer or employee of the Auditor of Public Accounts whose official duties require such disclosure, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution. The guilty officer or employee shall be dismissed from employment and be ineligible to hold any position of employment with the State of Nebraska for a period of two years thereafter. For purposes of this subsection, officer or employee shall include a former officer or employee of the Auditor of Public Accounts.

(11) For purposes of subsections (10) through (13) of this section:

(a) Tax returns shall mean any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2714 to 77-27,135 which is filed with the Tax Commissioner by, on

behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return;

(b) Return information shall mean:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Disclosures shall mean the making known to any person in any manner a return or return information.

(12) The Auditor of Public Accounts shall (a) notify the Tax Commissioner in writing thirty days prior to the beginning of an audit of his or her intent to conduct an audit, (b) provide an audit plan, and (c) provide a list of the tax returns and tax return information identified for inspection during the audit.

(13) The Auditor of Public Accounts shall, as a condition for receiving tax returns and tax return information: (a) Subject his or her employees to the same confidential information safeguards and disclosure procedures as required of Department of Revenue employees; (b) establish and maintain a permanent system of standardized records with respect to any request for tax returns or tax return information, the reason for such request, and the date of such request and any disclosure of the tax return or tax return information; (c) establish and maintain a secure area or place in the Department of Revenue in which the tax returns, tax return information, or audit workpapers shall be stored; (d) restrict access to the tax returns or tax return information only to persons whose duties or responsibilities require access; (e) provide such other safeguards as the Tax Commissioner determines to be necessary or appropriate to protect the confidentiality of the tax returns or tax return information; (f) provide a report to the Tax Commissioner which describes the procedures established and utilized by the Auditor of Public Accounts for insuring the confidentiality of tax returns, tax return information, and audit workpapers; and (g) upon completion of use of such returns or tax return information, return to the Tax Commissioner such returns or tax return information, along with any copies.

(14) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under 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 rules and regulations of the Tax

Commissioner.

(15) 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 adopt and 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. 73. That section 77-27,188.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,188.01. (1) The credit allowed under section 77-27,188 may be used to obtain a refund of sales and use taxes paid or against the income tax liability of the taxpayer.

(2) A claim for the credit may be filed quarterly for refund of the sales and use taxes paid, either directly or indirectly, after the filing of the income tax return for the taxable year in which the credit was first allowed.

(3) The credit may be used to obtain a refund of sales and use taxes paid before the end of the taxable year for which the credit was allowed, except that the amount refunded under this subsection shall not exceed the amount of the sales and use taxes paid, either directly or indirectly, by the taxpayer on the qualifying investment.

(4) For ~~the~~ purposes of subsections (2) and (3) of this section, the taxpayer shall be deemed to have paid indirectly any sales or use taxes paid by a contractor on ~~tangible personal~~ property ~~incorporated into~~ annexed to an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the Nebraska sales and use taxes paid on the materials, or the taxpayer, with the permission of the Tax Commissioner and a certification from the contractor that Nebraska sales and use taxes were paid on all materials, may presume that fifty percent of the cost of the improvement was for materials ~~incorporated~~ annexed to real estate on which the tax was paid.

(5) The credit shall be a nonrefundable credit when used against the income tax liability of the taxpayer. The credit shall be applied before any refundable credits are applied. The amount of the credit that may be used in any taxable year shall not exceed fifty percent of the income tax liability of the taxpayer reduced by all other nonrefundable credits except the credits prescribed in section 77-4105.

(6) The credit that is not used against liabilities incurred in the taxable year in which such credit was first allowable may be carried over and used against the liabilities incurred in the five immediately succeeding taxable years. The credits carried over shall be used in the order in which they were first allowed and before any additional credit allowable in a current taxable year may be used.

(7) No claim for refund of sales and use taxes under this section may be filed prior to January 1, 1989.

(8) Credits distributed to a partner, shareholder, or beneficiary under section 77-27,194 may only be used against the income tax liability of the partner, shareholder, or beneficiary receiving the credits.

Sec. 74. That section 77-3901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3901. Sections 77-3901 to 77-3908 and section 78 of this act shall be known and may be cited as the Uniform State Tax Lien Registration and Enforcement Act.

Sec. 75. That section 77-3904, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3904. (1) If any person liable to pay any tax or fee under any tax program administered by the Tax Commissioner neglects or refuses to pay such tax or fee after demand, the amount of such tax or fee, including any interest, penalty, and additions to such tax and such additional costs that may accrue, shall be a lien in favor of the State of Nebraska upon all property and rights to property, whether real or personal, then owned by such person or acquired by him or her thereafter and prior to the expiration of the lien. Unless another date is specifically provided by law, such lien shall arise at the time of the assessment and shall remain in effect (a) for three years from the time of the assessment if the notice of lien is not filed for record with the appropriate filing officer, (b) for five ten years from the time of filing for record with the appropriate filing officer, or (c) until such amounts have been paid or a judgment against such person arising out of such liability has been satisfied or has become unenforceable by reason of lapse of time, unless a continuation statement is filed prior to the lapse.

(2) The Tax Commissioner may, within three years after the time of assessment, file for record with the appropriate filing officer a notice of lien specifying the year the tax was due, the tax program, and the amount of the tax and any interest, penalty, or addition to such tax that are due. Such notice shall contain the name and last-known address of the taxpayer, the taxpayer's social security number or federal identification number, the Tax Commissioner's serial number, and a statement to the effect that the Tax Commissioner has complied with all provisions of the law for the particular tax program which he or she administers in the determination of the amount of the tax and any interest, penalty, and addition to such tax required to be paid.

(3) A lien imposed pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be valid against any subsequent creditor when notice of such lien and the amount due has been filed by the Tax Commissioner with the appropriate filing officer. 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 future advances, the lien provided in the act, when notice thereof has been filed with the appropriate filing officer, shall be subject to such prior lien unless the Tax Commissioner has notified the lienholder in writing of the recording of such tax lien, 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 the act.

(4) The lien may, within five ten years from the date of filing for record of the notice of lien with the appropriate filing officer, be extended by filing for record a continuation statement. Upon timely filing of the continuation statement, the effectiveness of the original notice shall be continued for five ten years after the last date to which the filing was effective. After such period the notice shall lapse in the manner prescribed in subsection (1) of this section unless another continuation statement is filed prior to such lapse.

(5) When a termination statement of any tax lien issued by the Tax Commissioner is filed in the office where the notice of lien is filed, the appropriate filing officer shall enter such statement with the date of filing in the state tax lien index where notice of the lien so terminated is entered and shall file the termination statement with the notice of the lien.

(6) The Tax Commissioner may at any time, upon request of any party involved, release from a lien all or any portion of the property subject to any lien provided for in the Uniform State Tax Lien Registration and Enforcement Act or subordinate a lien to other liens and encumbrances if he or she determines that (a) the tax amount and any interest, penalties, and additions to such tax have been paid or secured sufficiently by a lien on other property, (b) the lien has become legally unenforceable, (c) a surety bond or other satisfactory security has been posted, deposited, or pledged with the Tax Commissioner in an amount sufficient to secure the payment of such taxes and any interest, penalties, and additions to such taxes, or (d) the release, partial release, or subordination of the lien will not jeopardize the collection of such taxes and any interest, penalties, and additions to such tax.

(7) A certificate by the Tax Commissioner stating that any property has been released from the lien or the lien has been subordinated to other liens and encumbrances shall be conclusive evidence that the property has in fact been released or the lien has been subordinated pursuant to the certificate.

Sec. 76. That section 77-3905, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3905. (1) At any time within three years after any amount of tax to be collected under any tax program administered by the Tax Commissioner is assessed or within five ten years after the last filing for record as set forth in the Uniform State Tax Lien Registration and Enforcement Act, the Tax Commissioner may bring an action in the courts of this state, any other state, or the United States in the name of the people of the State of Nebraska to collect the delinquent amount together with penalties, any additions to such tax, costs, and interest.

(2) 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.

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

(4) 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 the compliance by the Tax Commissioner with all provisions of the applicable tax program which he or she administers in relation to the computation and determination of the amounts set forth.

(5) The tax amounts required to be paid by any person under any tax program administered by the Tax Commissioner together with any interest, penalties, and additions to such tax shall be satisfied first in any of the following cases: When the person is insolvent; when the person makes a voluntary assignment of his or her assets; when the estate of the person in the hands of executors, personal representatives, administrators, or heirs is insufficient to pay all the debts due from the deceased; or when the estate and effects of an absconding, concealed, or absent person required to pay any amount under any tax program administered by the Tax Commissioner are levied upon by process of law.

(6) Any tax which by law must be deducted and withheld by an employer or payor or is collected by a retailer or any other designated person as agent for the State of Nebraska on any transaction governed by a tax program administered by the Tax Commissioner shall constitute a trust fund in the hands of the employer, payor, or retailer or such other designated person and shall be owned by the state as of the time the tax is deducted and withheld or is owing to the employer, payor, or retailer or such other designated person.

Sec. 77. That section 77-3906, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3906. (1) In addition to all other remedies or actions provided by law under any tax program administered by the Tax Commissioner, it shall be lawful for the Tax Commissioner, after making demand for payment, to collect any delinquent taxes, together with any interest, penalties, and additions to such tax by distraint and sale of the real and personal property of the taxpayer. If the Tax Commissioner finds that the collection of any tax is in jeopardy pursuant to section 77-2710, 77-27,111, or 77-4311, notice and demand for immediate payment of such tax may be made by the Tax Commissioner and, upon failure or refusal to pay such tax, collection by levy shall be lawful.

(2) In case of failure to pay taxes or deficiencies, the Tax Commissioner or his or her authorized employee may levy or, by warrant issued under his or her own hand, authorize a sheriff or duly authorized employee of the Department of Revenue to levy upon, seize, and sell such real and personal property belonging to the taxpayer, except exempt property, as is necessary to satisfy the liability 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.

(3) When a warrant is issued or a levy is made by the Tax Commissioner or his or her duly authorized employee for the collection of any tax and any interest, penalty, or addition to such tax imposed by law under any tax program administered by the Tax Commissioner or for the

enforcement of any tax lien authorized by the Uniform State Tax Lien Registration and Enforcement Act, such warrant or levy shall have the same force and effect of a levy and sale pursuant to a writ of execution. Such warrant or levy may be issued and sale made pursuant to it in the same manner and with the same force and effect of a levy and sale pursuant to a writ of execution. The Tax Commissioner shall pay the levying sheriff 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 publications in a newspaper shall be subject to approval by the Tax Commissioner. 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 identity of the tax program, the year for which such tax and any interest, penalty, or addition to such tax is due and the amount thereof, the fact that the Tax Commissioner has complied with all provisions of the law for the applicable tax program which he or she administers in the determination of the amount required to be paid, and that the tax and any interest, penalty, or addition to such tax is due and payable according to law.

(4)(a) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the taxpayer under his or her control at the time the levy was served or thereafter. Such person may be subject to collection provisions as set forth in the act.

(b) The effect of a levy on salary, wages, or other regular payments due to or received by a taxpayer shall be continuous from the date the levy is served until the amount of the levy, with accrued interest, is satisfied.

(5) Notice of the sale and the time and place of the sale shall be given, to the delinquent taxpayer and to any other person with an interest in the property who has filed for record with the appropriate filing officer on such property, in writing at least twenty days prior to the date of such 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 ten days given by publication at least once each week for four weeks prior to the date of the sale in the 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 of the sale. The notice shall contain a description of the property to be sold, a statement of the type of tax due and of the amount due, including interest, penalties, additions to tax, and costs, the name of the delinquent taxpayer, and the further statement that unless the amount due, including interest, penalties, additions to tax, and costs, is paid on or before the time fixed in the notice for the sale or 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.

(5) (6) 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 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.

(6) (7) Whenever any property which is seized and sold under this section is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the sheriff 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.

(7) (8) If after the sale the money received exceeds the total of all amounts due the state, including any interest, penalties, additions to tax, and costs, and if there is no other interest in or lien upon such money received, the Tax Commissioner shall return the excess to the person liable for the amounts and obtain a receipt. If any person having an interest 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 his or her heirs, successors, or assigns. No interest earned, if any, shall become the property of the person liable for the amount.

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

Sec. 78. The changes made to sections 77-3904, 77-3905, and 77-3906 by this legislative bill shall apply to filings and sales made on or after October 1, 1993.

Sec. 79. That section 21, Legislative Bill 346, Ninety-third Legislature, First Session, 1993, be amended to read as follows:

Sec. 21. (1) Rental companies engaged in the business of renting private passenger motor vehicles used to carry fifteen passengers or less for periods of thirty-one days or less shall collect, at the time the vehicle is rented in Nebraska, a fee of four and one-half percent of each

rental contract amount, not including sales tax. For purposes of this section, a vehicle is rented in Nebraska if it is picked up by the renter in Nebraska. The fee shall be computed in accordance with the method used for the sales tax imposed by the state. The fee shall not be subject to sales tax. The fee shall be noted in the rental contract and collected in accordance with the terms of the contract. The fee shall be retained by the vehicle owner or the rental company engaged in the business of renting private passenger motor vehicles. Fees collected pursuant to this section ~~may~~ shall be used ~~only~~ by the vehicle owner or the rental company for reimbursement of the amount of ~~personal property~~ motor vehicle taxes imposed and paid in Nebraska upon the vehicles by the vehicle owner or rental company.

(2) On February 15 of each year, the fees imposed by this section for the preceding calendar year, to the extent the fees exceed the ~~personal property~~ motor vehicle taxes imposed ~~and paid~~ in Nebraska upon the vehicles for the preceding calendar year, shall be due and payable to the county treasurer of the county where the transactions occurred. The fee shall be remitted ~~in the form~~ on forms prescribed by the county treasurer. The county shall allocate and distribute such proceeds in the same manner as the proceeds from motor vehicle taxes are allocated and distributed pursuant to section 77-1240.01. The revenue received by the county under this section may be expended for any lawful purpose.

(3) The revenue received by the county under this section shall be included and considered as proceeds of motor vehicle taxes for purposes of any growth limitation on budgets of political subdivisions funded by property taxes.

(4) The fee imposed under this section shall be in addition to any other tax authorized by law to be levied on the business activities described in this section and shall be in addition to the sales tax imposed by the state or any municipality.

(5) The county treasurer, county board, and county sheriff may use any method specified in Chapter 77, article 17, for the collection of property taxes to collect the fee imposed by this section.

Sec. 80. Sections 14 to 56, 58 to 60, 73, and 81 of this act shall become operative on October 1, 1993. Sections 61, 63 to 65, 68, 69, 72, and 82 of this act shall become operative for taxable years beginning or deemed to begin on or after January 1, 1993, under the Internal Revenue Code of 1986, as amended. Sections 79 and 84 of this act shall become operative on January 1, 1994. Sections 2, 62, 66, 67, 70, 71, and 85 of this act shall become operative May 1, 1993. The other sections of this act shall become operative on their effective date.

Sec. 81. That original sections 77-2706, 77-2709.01, and 77-27,188.01, Reissue Revised Statutes of Nebraska, 1943, sections 77-2702.05 to 77-2702.07, 77-2702.09, 77-2702.11 to 77-2702.19, 77-2702.23, 77-2704.02, 77-2704.05 to 77-2704.12, 77-2704.15, 77-2704.24, 77-2704.25, 77-2704.28 to 77-2704.33, 77-2704.35, and 77-2705, Revised Statutes Supplement, 1992, section 77-2709, Reissue

Revised Statutes of Nebraska, 1943, as amended by section 30, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, sections 77-2702.03, 77-2704.13, 77-2708, and 77-2711, Revised Statutes Supplement, 1992, as amended by sections 23, 27, 28, and 31, respectively, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, section 77-2701, Revised Statutes Supplement, 1992, as amended by section 22, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 69, Legislative Bill 138, Ninety-third Legislature, First Session, 1993, and section 77-2703, Revised Statutes Supplement, 1992, as amended by section 26, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 45, Legislative Bill 112, Ninety-third Legislature, First Session, 1993, are repealed.

Sec. 82. That original sections 77-2753, 77-2777, 77-2778, 77-2780, 77-2789, and 77-2790, Reissue Revised Statutes of Nebraska, 1943, and section 77-27,119, Revised Statutes Supplement, 1992, are repealed.

Sec. 83. That original sections 57-234, 77-366, 77-375, 77-377, 77-3,110, 77-3901, and 77-3904 to 77-3906, Reissue Revised Statutes of Nebraska, 1943, sections 77-684 and 77-2101.02, Revised Statutes Supplement, 1992, section 21-330, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, sections 77-2106.01 and 77-2708.01, Revised Statutes Supplement, 1992, as amended by sections 20 and 29, respectively, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 77-202.01, Reissue Revised Statutes of Nebraska, 1943, as amended by section 7, Legislative Bill 346, Ninety-third Legislature, First Session, 1993, are repealed.

Sec. 84. That original section 21, Legislative Bill 346, Ninety-third Legislature, First Session, 1993, is repealed.

Sec. 85. That original sections 77-2775, 77-2785, 77-2786, and 77-2793, Reissue Revised Statutes of Nebraska, 1943, section 77-2794, Revised Statutes Supplement, 1992, as amended by section 38, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, and section 5, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, are repealed.

Sec. 86. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.