

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 283

Final Reading

Introduced by Conrad, 46.

Read first time January 16, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to limited liability companies; to amend section
 2 9-614, Reissue Revised Statutes of Nebraska, and sections
 3 67-248.02, 67-298, 70-1903, 77-2704.57, 77-2716,
 4 77-2734.01, and 84-511, Revised Statutes Cumulative
 5 Supplement, 2012; to eliminate the Limited Liability
 6 Company Act; to harmonize provisions; to repeal the
 7 original sections; and to outright repeal sections
 8 21-2601, 21-2601.01, 21-2602, 21-2603, 21-2604,
 9 21-2604.01, 21-2605, 21-2606, 21-2607, 21-2608, 21-2609,
 10 21-2610, 21-2611, 21-2612, 21-2613, 21-2614, 21-2615,
 11 21-2616, 21-2617, 21-2617.01, 21-2618, 21-2619, 21-2620,
 12 21-2621, 21-2622, 21-2623, 21-2624, 21-2625, 21-2626,
 13 21-2627, 21-2628, 21-2629, 21-2630, 21-2631, 21-2631.01,
 14 21-2631.02, 21-2631.03, 21-2632, 21-2632.01, 21-2633,
 15 21-2634, 21-2635, 21-2636, 21-2637, 21-2638, 21-2639,
 16 21-2640, 21-2641, 21-2642, 21-2643, 21-2644, 21-2645,

1 21-2646, 21-2647, 21-2648, 21-2649, 21-2650, 21-2651,
2 21-2652, 21-2653, and 21-2654, Reissue Revised Statutes
3 of Nebraska.
4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 9-614, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 9-614 Lottery operator shall mean any individual, sole
4 proprietorship, partnership, limited liability company, or
5 corporation which operates a lottery on behalf of a county, city, or
6 village.

7 A lottery operator shall be a resident of Nebraska or, if
8 a partnership, limited liability company, or corporation, shall be
9 organized under the laws of this state as a partnership, formed under
10 the ~~Limited Liability Company Act or the Nebraska Uniform Limited~~
11 ~~Liability Company Act~~, or incorporated under the Business Corporation
12 Act.

13 Sec. 2. Section 67-248.02, Revised Statutes Cumulative
14 Supplement, 2012, is amended to read:

15 67-248.02 (a)(1) A domestic limited partnership may merge
16 or consolidate with one or more domestic or foreign limited
17 partnerships or other business entities pursuant to an agreement or
18 plan of merger or consolidation adopted in accordance with this
19 section setting forth:

20 (A) The name of each limited partnership or business
21 entity that is a party to the merger or consolidation;

22 (B) The name, type of business entity, and jurisdiction
23 of formation of the surviving limited partnership or business entity
24 into which the limited partnership and such other business entities
25 will merge or the name, type of business entity, and jurisdiction of

1 formation of the new business entity resulting from the consolidation
2 of the limited partnership and the other business entities that are
3 party to a plan of consolidation;

4 (C) The terms and conditions of the merger or
5 consolidation, including the manner and basis of converting the
6 interests of the partners, members, or shareholders, as the case may
7 be, of each limited partnership or business entity that is a party to
8 such merger or consolidation into interests or obligations of the
9 surviving or new limited partnership or business entity resulting
10 therefrom or into money or other property in whole or in part; and

11 (D) Such other provisions as the merging or consolidating
12 limited partnerships or business entities may desire.

13 (2) Notwithstanding the provisions of section 67-450, an
14 agreement or plan of merger or consolidation shall be approved (A) by
15 each domestic limited partnership that is a party thereto in
16 accordance with the voting provisions of its partnership agreement
17 or, if not so provided, by each general partner and by limited
18 partners who own in the aggregate more than a fifty percent interest
19 in the profits of such limited partnership owned by all of the
20 limited partners or, if there is more than one class or group of
21 limited partners, then by limited partners of each class or group of
22 limited partners, in either case, who own in the aggregate more than
23 fifty percent of the then current percentage of other interest in the
24 profits of such limited partnership owned by all of the limited
25 partners in each such class or group and (B) by each other business

1 entity that is a party thereto in accordance with the laws under
2 which such business entity was formed and in accordance with the
3 applicable requirements of its organizational documents.
4 Notwithstanding such approval, at any time before the articles of
5 merger or consolidation are filed, an agreement or plan of merger or
6 of consolidation may be terminated or amended pursuant to a provision
7 for such termination or amendment contained in such agreement or plan
8 of merger or of consolidation.

9 (b) As used in this section:

10 (1) Business entity means a domestic or foreign
11 corporation; a domestic or foreign partnership; a domestic or foreign
12 limited partnership; or a domestic or foreign limited liability
13 company; and

14 (2) Organizational documents includes:

15 (A) For a domestic or foreign corporation, its articles
16 of incorporation, bylaws, and other agreements among its shareholders
17 which are authorized by its governing statute or comparable records
18 as provided in its governing statute;

19 (B) For a domestic or foreign partnership, its
20 partnership agreement;

21 (C) For a domestic or foreign limited partnership, its
22 certificate of limited partnership and partnership agreement; and

23 (D) For a domestic or foreign limited liability company,
24 its certificate or articles of organization and operating agreement
25 or comparable records as provided in its governing statute.

1 (c) After a plan of merger or consolidation with respect
2 to a domestic limited partnership is approved in accordance with this
3 section, the surviving or resulting business entity shall deliver to
4 the Secretary of State for filing articles of merger or consolidation
5 setting forth:

6 (1) The plan of merger or consolidation;

7 (2) A statement to the effect that the requisite approval
8 was obtained by the partners, members, or shareholders, as the case
9 may be, of each business entity that is a party to such plan of
10 merger or consolidation; and

11 (3) If the surviving or resulting business entity of a
12 merger or consolidation is not a domestic business entity, an
13 agreement by the surviving or resulting business entity that it may
14 be served with process within or outside this state in any proceeding
15 in the courts of this state for the enforcement of any obligation of
16 such former domestic limited partnership.

17 (d) If the surviving or resulting business entity of a
18 merger or consolidation under this section is a domestic corporation,
19 then the merger or consolidation shall become effective and shall
20 have the effects provided in sections 21-20,128 to 21-20,134. If the
21 surviving or resulting business entity of a merger or consolidation
22 under this section is a domestic limited liability company, then the
23 merger or consolidation shall become effective and shall have the
24 effects provided in sections 21-170 to 21-174. ~~or 21-2647 to 21-2652,~~
25 ~~as the case may be.~~ If the surviving or resulting business entity of

1 a merger or consolidation under this section is a domestic
2 partnership other than a limited partnership, then the merger or
3 consolidation shall become effective and shall have the effects
4 provided in sections 67-450 to 67-452. If the surviving or resulting
5 business entity of a merger or consolidation is a domestic limited
6 partnership, then:

7 (1) The merger or consolidation shall take effect on the
8 later of:

9 (A) The approval of the plan or agreement of merger or
10 consolidation as provided in this section;

11 (B) The filing of all documents required by law to be
12 filed as a condition to the effectiveness of the merger or
13 consolidation; or

14 (C) Any effective date specified in the plan or agreement
15 of merger or consolidation;

16 (2) The several limited partnerships and other business
17 entities which are parties to the plan or agreement of merger or
18 consolidation shall be a single limited partnership which, in the
19 case of a merger, shall be that limited partnership designated in the
20 merger plan or agreement as the surviving limited partnership and, in
21 the case of a consolidation, shall be the new limited partnership
22 provided for in the consolidation plan or agreement;

23 (3) The separate existence of all limited partnerships
24 and other business entities which are parties to the plan or
25 agreement of merger or consolidation, except the surviving or new

1 limited partnership, shall cease;

2 (4) The surviving or new limited partnership shall have
3 all the rights, privileges, immunities, and powers and shall be
4 subject to all the duties and liabilities of a limited partnership
5 organized under the Nebraska Uniform Limited Partnership Act;

6 (5) The surviving or new limited partnership shall
7 possess all the rights, privileges, immunities, and powers, of a
8 public as well as of a private nature, of each of the merging or
9 consolidating limited partnerships and other business entities,
10 subject to the Nebraska Uniform Limited Partnership Act. All
11 property, real, personal, and mixed, all debts due on whatever
12 account, all other things and causes of actions, and all and every
13 other interest belonging to or due to any of the limited partnerships
14 and other business entities, as merged or consolidated, shall be
15 taken and deemed to be transferred to and vested in the surviving or
16 new limited partnership without further act and deed and shall
17 thereafter be the property of the surviving or new limited
18 partnership as they were of any of such merging or consolidating
19 business entities. The title to any real property or any interest in
20 such property vested in any of such merging or consolidating business
21 entities shall not revert or be in any way impaired by reason of such
22 merger or consolidation;

23 (6) Such surviving or new limited partnership shall be
24 responsible and liable for all the liabilities and obligations of
25 each of the limited partnerships and other business entities so

1 merged or consolidated. Any claim existing or action or proceeding
2 pending by or against any of such limited partnerships or other
3 business entities may be prosecuted as if such merger or
4 consolidation had not taken place or such surviving or new limited
5 partnership may be substituted in its place. Neither the rights of
6 creditors nor any liens upon the property of any such limited
7 partnerships or other business entities shall be impaired by such
8 merger or consolidation; and

9 (7) The equity interests or securities of each limited
10 partnership or other business entity which is a party to the plan or
11 agreement of merger or consolidation that are, under the terms of the
12 merger or consolidation, to be converted or exchanged, shall cease to
13 exist, and the holders of such equity interests or securities shall
14 thereafter be entitled only to the cash, property interests, or
15 securities into which they shall have been converted in accordance
16 with the terms of the plan or agreement of merger or consolidation,
17 subject to any rights under sections 21-20,137 to 21-20,150, ~~the~~
18 ~~Limited Liability Company Act~~, or the Nebraska Uniform Limited
19 Liability Company Act or other applicable law.

20 Sec. 3. Section 67-298, Revised Statutes Cumulative
21 Supplement, 2012, is amended to read:

22 67-298 (a) After a plan of conversion is approved, a
23 domestic limited partnership that is being converted shall deliver to
24 the Secretary of State for filing articles of conversion which shall
25 include all of the following:

1 (1) A statement that the domestic limited partnership has
2 been converted into another entity;

3 (2) The name and form of the other entity and the
4 jurisdiction of its governing statute;

5 (3) The date the conversion is effective under the
6 governing statute of the converted entity;

7 (4) A statement that the conversion was approved as
8 required by sections 67-446 to 67-453;

9 (5) A statement that the conversion was approved as
10 required by the governing statute of the converted entity; and

11 (6) A domestic limited partnership converting into a
12 foreign limited liability company shall deliver to the office of the
13 Secretary of State for filing (A) a certificate which sets forth all
14 of the information required to be in the certificate or other
15 instrument of conversion filed pursuant to the laws under which the
16 resulting foreign limited liability company is formed and (B) an
17 agreement that the resulting foreign limited liability company may be
18 served with process within or outside this state in any proceeding in
19 the courts of this state for the enforcement of any obligation of the
20 former domestic corporation.

21 (b) The conversion shall become effective as provided by
22 the ~~Limited Liability Company Act, the Nebraska Uniform Limited~~
23 ~~Liability Company Act, the Uniform Partnership Act of 1998, or the~~
24 governing statute of the foreign limited liability company.

25 Sec. 4. Section 70-1903, Revised Statutes Cumulative

1 Supplement, 2012, is amended to read:

2 70-1903 For purposes of the Rural Community-Based Energy
3 Development Act:

4 (1) C-BED project or community-based energy development
5 project means a new wind energy project that:

6 (a) Has an ownership structure as follows:

7 (i) For a C-BED project that consists of more than two
8 turbines, has one or more qualified owners with no single individual
9 qualified owner owning directly or indirectly more than fifteen
10 percent of the project and with at least thirty-three percent of the
11 gross power purchase agreement payments flowing to the qualified
12 owner or owners or local community; or

13 (ii) For a C-BED project that consists of one or two
14 turbines, has one or more qualified owners with at least thirty-three
15 percent of the gross power purchase agreement payments flowing to a
16 qualified owner or owners or local community; and

17 (b) Has a resolution of support adopted:

18 (i) By the county board of each county in which the C-BED
19 project is to be located; or

20 (ii) By the tribal council for a C-BED project located
21 within the boundaries of an Indian reservation;

22 (2) Debt financing payments means principal, interest,
23 and other typical financing costs paid by the C-BED project company
24 to one or more third-party financial institutions for the financing
25 or refinancing of the construction of the C-BED project. Debt

1 financing payments does not include the repayment of principal at the
2 time of a refinancing;

3 (3) Electric utility means an electric supplier that:

4 (a) Owns more than one hundred miles of one-hundred-
5 fifteen-kilovolt or larger transmission lines in the State of
6 Nebraska;

7 (b) Owns more than two hundred megawatts of electric
8 generating facilities; and

9 (c) Has the obligation to directly serve more than two
10 hundred megawatts of wholesale or retail electric load in the State
11 of Nebraska;

12 (4) Gross power purchase agreement payments means the
13 total amount of payments during the life of the agreement. For power
14 purchase agreements entered into on or before December 31, 2011, if
15 the qualified owners have a combined total of at least thirty-three
16 percent of the equity ownership in the C-BED project, gross power
17 purchase agreement payments shall be reduced by the debt financing
18 payments; and

19 (5) Qualified owner means:

20 (a) A Nebraska resident;

21 (b) A limited liability company that is organized under
22 the ~~Limited Liability Company Act or the Nebraska Uniform Limited~~
23 ~~Liability Company Act~~ and that is made up of members who are Nebraska
24 residents;

25 (c) A Nebraska nonprofit corporation organized under the

1 Nebraska Nonprofit Corporation Act;

2 (d) An electric supplier as defined in section
3 70-1001.01, except that ownership in a single C-BED project is
4 limited to no more than:

5 (i) Fifteen percent either directly or indirectly by a
6 single electric supplier; and

7 (ii) A combined total of twenty-five percent ownership
8 either directly or indirectly by multiple electric suppliers; or

9 (e) A tribal council.

10 Sec. 5. Section 77-2704.57, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 77-2704.57 (1) Sales and use tax shall not be imposed on
13 the gross receipts from the sale, lease, or rental of personal
14 property for use in a C-BED project or community-based energy
15 development project. This exemption shall be conditioned upon filing
16 requirements for the exemption as imposed by the Tax Commissioner.
17 The requirements imposed by the Tax Commissioner shall be related to
18 ensuring that the property purchased qualifies for the exemption. The
19 Tax Commissioner may require the filing of the documents showing
20 compliance with section 70-1907, the organization of the project, the
21 distribution of the payments, the power purchase agreements, the
22 project pro forma, articles of incorporation, operating agreements,
23 and any amendments or changes to these documents during the life of
24 the power purchase agreement.

25 (2) The Tax Commissioner shall notify an electric utility

1 that has a power purchase agreement with a C-BED project if there is
2 a change in project ownership which makes the project no longer
3 eligible as a C-BED project. Purchase of a C-BED project by an
4 electric utility prior to the end of the power purchase agreement
5 disqualifies the C-BED project for the exemption, but the Department
6 of Revenue may not recover the amount of the sales and use tax that
7 was not paid by the project prior to the purchase.

8 (3) For purposes of this section:

9 (a) C-BED project or community-based energy development
10 project means a new wind energy project that:

11 (i) Has an ownership structure as follows:

12 (A) For a C-BED project that consists of more than two
13 turbines, has one or more qualified owners with no single individual
14 qualified owner owning directly or indirectly more than fifteen
15 percent of the project and with at least thirty-three percent of the
16 gross power purchase agreement payments flowing to the qualified
17 owner or owners or local community; or

18 (B) For a C-BED project that consists of one or two
19 turbines, has one or more qualified owners with at least thirty-three
20 percent of the gross power purchase agreement payments flowing to a
21 qualified owner or owners or local community; and

22 (ii) Has a resolution of support adopted:

23 (A) By the county board of each county in which the C-BED
24 project is to be located; or

25 (B) By the tribal council for a C-BED project located

1 within the boundaries of an Indian reservation;

2 (b) Debt financing payments means principal, interest,
3 and other typical financing costs paid by the C-BED project company
4 to one or more third-party financial institutions for the financing
5 or refinancing of the construction of the C-BED project. Debt
6 financing payments does not include the repayment of principal at the
7 time of a refinancing;

8 (c) New wind energy project means any tangible personal
9 property incorporated into the manufacture, installation,
10 construction, repair, or replacement of a device, such as a wind
11 charger, windmill, or wind turbine, which is used to convert wind
12 energy to electrical energy or for the transmission of electricity to
13 the purchaser; and

14 (d) Qualified owner means:

15 (i) A Nebraska resident;

16 (ii) A limited liability company that is organized under
17 the ~~Limited Liability Company Act~~ or the Nebraska Uniform Limited
18 Liability Company Act and that is entirely made up of members who are
19 Nebraska residents;

20 (iii) A Nebraska nonprofit corporation organized under
21 the Nebraska Nonprofit Corporation Act;

22 (iv) An electric supplier as defined in section
23 70-1001.01, except that ownership in a single C-BED project is
24 limited to no more than:

25 (A) Fifteen percent either directly or indirectly by a

1 single electric supplier; and

2 (B) A combined total of twenty-five percent ownership
3 either directly or indirectly by multiple electric suppliers; or

4 (v) A tribal council.

5 (4) Gross power purchase agreement payments are the total
6 amount of payments during the life of the agreement. For power
7 purchase agreements entered into on or before December 31, 2011, if
8 the qualified owners have a combined total of at least thirty-three
9 percent of the equity ownership in the C-BED project, gross power
10 purchase agreement payments shall be reduced by the debt financing
11 payments. For the purpose of determining eligibility of the project,
12 an estimate of the payments and their recipients shall be used.

13 (5) Payments to the local community include, but are not
14 limited to, lease payments to property owners on whose property a
15 turbine is located, wind agreement payments, and real and personal
16 property tax receipts from the C-BED project.

17 (6) The Department of Revenue may examine the actual
18 payments and the distribution of the payments to determine if the
19 projected distributions were met. If the payment distributions to
20 qualified owners do not meet the requirements of this section, the
21 department may recover the amount of the sales or use tax that was
22 not paid by the project at any time up until the end of three years
23 after the end of the power purchase agreement.

24 (7) At any time prior to the end of the power purchase
25 agreements, the project may voluntarily surrender the exemption

1 granted by the Tax Commissioner and pay the amount of sales and use
2 tax that would otherwise have been due.

3 (8) The amount of the tax due under either subsection (6)
4 or (7) of this section shall be increased by interest at the rate
5 specified in section 45-104.02, as such rate may from time to time be
6 adjusted, from the date the tax would have been due if no exemption
7 was granted until the date paid.

8 Sec. 6. Section 77-2716, Revised Statutes Cumulative
9 Supplement, 2012, is amended to read:

10 77-2716 (1) The following adjustments to federal adjusted
11 gross income or, for corporations and fiduciaries, federal taxable
12 income shall be made for interest or dividends received:

13 (a) There shall be subtracted interest or dividends
14 received by the owner of obligations of the United States and its
15 territories and possessions or of any authority, commission, or
16 instrumentality of the United States to the extent includable in
17 gross income for federal income tax purposes but exempt from state
18 income taxes under the laws of the United States;

19 (b) There shall be subtracted that portion of the total
20 dividends and other income received from a regulated investment
21 company which is attributable to obligations described in subdivision
22 (a) of this subsection as reported to the recipient by the regulated
23 investment company;

24 (c) There shall be added interest or dividends received
25 by the owner of obligations of the District of Columbia, other states

1 of the United States, or their political subdivisions, authorities,
2 commissions, or instrumentalities to the extent excluded in the
3 computation of gross income for federal income tax purposes except
4 that such interest or dividends shall not be added if received by a
5 corporation which is a regulated investment company;

6 (d) There shall be added that portion of the total
7 dividends and other income received from a regulated investment
8 company which is attributable to obligations described in subdivision
9 (c) of this subsection and excluded for federal income tax purposes
10 as reported to the recipient by the regulated investment company; and

11 (e)(i) Any amount subtracted under this subsection shall
12 be reduced by any interest on indebtedness incurred to carry the
13 obligations or securities described in this subsection or the
14 investment in the regulated investment company and by any expenses
15 incurred in the production of interest or dividend income described
16 in this subsection to the extent that such expenses, including
17 amortizable bond premiums, are deductible in determining federal
18 taxable income.

19 (ii) Any amount added under this subsection shall be
20 reduced by any expenses incurred in the production of such income to
21 the extent disallowed in the computation of federal taxable income.

22 (2) There shall be allowed a net operating loss derived
23 from or connected with Nebraska sources computed under rules and
24 regulations adopted and promulgated by the Tax Commissioner
25 consistent, to the extent possible under the Nebraska Revenue Act of

1 1967, with the laws of the United States. For a resident individual,
2 estate, or trust, the net operating loss computed on the federal
3 income tax return shall be adjusted by the modifications contained in
4 this section. For a nonresident individual, estate, or trust or for a
5 partial-year resident individual, the net operating loss computed on
6 the federal return shall be adjusted by the modifications contained
7 in this section and any carryovers or carrybacks shall be limited to
8 the portion of the loss derived from or connected with Nebraska
9 sources.

10 (3) There shall be subtracted from federal adjusted gross
11 income for all taxable years beginning on or after January 1, 1987,
12 the amount of any state income tax refund to the extent such refund
13 was deducted under the Internal Revenue Code, was not allowed in the
14 computation of the tax due under the Nebraska Revenue Act of 1967,
15 and is included in federal adjusted gross income.

16 (4) Federal adjusted gross income, or, for a fiduciary,
17 federal taxable income shall be modified to exclude the portion of
18 the income or loss received from a small business corporation with an
19 election in effect under subchapter S of the Internal Revenue Code or
20 from a limited liability company organized pursuant to the ~~Limited~~
21 ~~Liability Company Act or the~~ Nebraska Uniform Limited Liability
22 Company Act that is not derived from or connected with Nebraska
23 sources as determined in section 77-2734.01.

24 (5) There shall be subtracted from federal adjusted gross
25 income or, for corporations and fiduciaries, federal taxable income

1 dividends received or deemed to be received from corporations which
2 are not subject to the Internal Revenue Code.

3 (6) There shall be subtracted from federal taxable income
4 a portion of the income earned by a corporation subject to the
5 Internal Revenue Code of 1986 that is actually taxed by a foreign
6 country or one of its political subdivisions at a rate in excess of
7 the maximum federal tax rate for corporations. The taxpayer may make
8 the computation for each foreign country or for groups of foreign
9 countries. The portion of the taxes that may be deducted shall be
10 computed in the following manner:

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

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

19 (c) The result of the calculation in subdivision (b) of
20 this subsection shall be subtracted from the amount of federal
21 taxable income used in subdivision (a) of this subsection. The result
22 of such calculation, if greater than zero, shall be subtracted from
23 federal taxable income.

24 (7) Federal adjusted gross income shall be modified to
25 exclude any amount repaid by the taxpayer for which a reduction in

1 federal tax is allowed under section 1341(a)(5) of the Internal
2 Revenue Code.

3 (8)(a) Federal adjusted gross income or, for corporations
4 and fiduciaries, federal taxable income shall be reduced, to the
5 extent included, by income from interest, earnings, and state
6 contributions received from the Nebraska educational savings plan
7 trust created in sections 85-1801 to 85-1814.

8 (b) Federal adjusted gross income or, for corporations
9 and fiduciaries, federal taxable income shall be reduced by any
10 contributions as a participant in the Nebraska educational savings
11 plan trust, to the extent not deducted for federal income tax
12 purposes, but not to exceed two thousand five hundred dollars per
13 married filing separate return or five thousand dollars for any other
14 return.

15 (c) Federal adjusted gross income or, for corporations
16 and fiduciaries, federal taxable income shall be increased by the
17 amount resulting from the cancellation of a participation agreement
18 refunded to the taxpayer as a participant in the Nebraska educational
19 savings plan trust to the extent previously deducted as a
20 contribution to the trust.

21 (9)(a) For income tax returns filed after September 10,
22 2001, for taxable years beginning or deemed to begin before January
23 1, 2006, under the Internal Revenue Code of 1986, as amended, federal
24 adjusted gross income or, for corporations and fiduciaries, federal
25 taxable income shall be increased by eighty-five percent of any

1 amount of any federal bonus depreciation received under the federal
2 Job Creation and Worker Assistance Act of 2002 or the federal Jobs
3 and Growth Tax Act of 2003, under section 168(k) or section 1400L of
4 the Internal Revenue Code of 1986, as amended, for assets placed in
5 service after September 10, 2001, and before December 31, 2005.

6 (b) For a partnership, limited liability company,
7 cooperative, including any cooperative exempt from income taxes under
8 section 521 of the Internal Revenue Code of 1986, as amended, limited
9 cooperative association, subchapter S corporation, or joint venture,
10 the increase shall be distributed to the partners, members,
11 shareholders, patrons, or beneficiaries in the same manner as income
12 is distributed for use against their income tax liabilities.

13 (c) For a corporation with a unitary business having
14 activity both inside and outside the state, the increase shall be
15 apportioned to Nebraska in the same manner as income is apportioned
16 to the state by section 77-2734.05.

17 (d) The amount of bonus depreciation added to federal
18 adjusted gross income or, for corporations and fiduciaries, federal
19 taxable income by this subsection shall be subtracted in a later
20 taxable year. Twenty percent of the total amount of bonus
21 depreciation added back by this subsection for tax years beginning or
22 deemed to begin before January 1, 2003, under the Internal Revenue
23 Code of 1986, as amended, may be subtracted in the first taxable year
24 beginning or deemed to begin on or after January 1, 2005, under the
25 Internal Revenue Code of 1986, as amended, and twenty percent in each

1 of the next four following taxable years. Twenty percent of the total
2 amount of bonus depreciation added back by this subsection for tax
3 years beginning or deemed to begin on or after January 1, 2003, may
4 be subtracted in the first taxable year beginning or deemed to begin
5 on or after January 1, 2006, under the Internal Revenue Code of 1986,
6 as amended, and twenty percent in each of the next four following
7 taxable years.

8 (10) For taxable years beginning or deemed to begin on or
9 after January 1, 2003, and before January 1, 2006, under the Internal
10 Revenue Code of 1986, as amended, federal adjusted gross income or,
11 for corporations and fiduciaries, federal taxable income shall be
12 increased by the amount of any capital investment that is expensed
13 under section 179 of the Internal Revenue Code of 1986, as amended,
14 that is in excess of twenty-five thousand dollars that is allowed
15 under the federal Jobs and Growth Tax Act of 2003. Twenty percent of
16 the total amount of expensing added back by this subsection for tax
17 years beginning or deemed to begin on or after January 1, 2003, may
18 be subtracted in the first taxable year beginning or deemed to begin
19 on or after January 1, 2006, under the Internal Revenue Code of 1986,
20 as amended, and twenty percent in each of the next four following tax
21 years.

22 (11)(a) Federal adjusted gross income shall be reduced by
23 contributions, up to two thousand dollars per married filing jointly
24 return or one thousand dollars for any other return, and any
25 investment earnings made as a participant in the Nebraska long-term

1 care savings plan under the Long-Term Care Savings Plan Act, to the
2 extent not deducted for federal income tax purposes.

3 (b) Federal adjusted gross income shall be increased by
4 the withdrawals made as a participant in the Nebraska long-term care
5 savings plan under the act by a person who is not a qualified
6 individual or for any reason other than transfer of funds to a
7 spouse, long-term care expenses, long-term care insurance premiums,
8 or death of the participant, including withdrawals made by reason of
9 cancellation of the participation agreement or termination of the
10 plan, to the extent previously deducted as a contribution or as
11 investment earnings.

12 (12) There shall be added to federal adjusted gross
13 income for individuals, estates, and trusts any amount taken as a
14 credit for franchise tax paid by a financial institution under
15 sections 77-3801 to 77-3807 as allowed by subsection (5) of section
16 77-2715.07.

17 Sec. 7. Section 77-2734.01, Revised Statutes Cumulative
18 Supplement, 2012, is amended to read:

19 77-2734.01 (1) Residents of Nebraska who are shareholders
20 of a small business corporation having an election in effect under
21 subchapter S of the Internal Revenue Code or who are members of a
22 limited liability company organized pursuant to the ~~Limited Liability~~
23 ~~Company Act or the~~ Nebraska Uniform Limited Liability Company Act
24 shall include in their Nebraska taxable income, to the extent
25 includable in federal gross income, their proportionate share of such

1 corporation's or limited liability company's federal income adjusted
2 pursuant to this section. Income or loss from such corporation or
3 limited liability company conducting a business, trade, profession,
4 or occupation shall be included in the Nebraska taxable income of a
5 shareholder or member who is a resident of this state to the extent
6 of such shareholder's or member's proportionate share of the net
7 income or loss from the conduct of such business, trade, profession,
8 or occupation within this state, determined under subsection (2) of
9 this section. A resident of Nebraska shall include in Nebraska
10 taxable income fair compensation for services rendered to such
11 corporation or limited liability company. Compensation actually paid
12 shall be presumed to be fair unless it is apparent to the Tax
13 Commissioner that such compensation is materially different from fair
14 value for the services rendered or has been manipulated for tax
15 avoidance purposes.

16 (2) The income of any small business corporation having
17 an election in effect under subchapter S of the Internal Revenue Code
18 or limited liability company organized pursuant to the ~~Limited~~
19 ~~Liability Company Act~~ or the Nebraska Uniform Limited Liability
20 Company Act that is derived from or connected with Nebraska sources
21 shall be determined in the following manner:

22 (a) If the small business corporation is a member of a
23 unitary group, the small business corporation shall be deemed to be
24 doing business within this state if any part of its income is derived
25 from transactions with other members of the unitary group doing

1 business within this state, and such corporation shall apportion its
2 income by using the apportionment factor determined for the entire
3 unitary group, including the small business corporation, under
4 sections 77-2734.05 to 77-2734.15;

5 (b) If the small business corporation or limited
6 liability company is not a member of a unitary group and is subject
7 to tax in another state, it shall apportion its income under sections
8 77-2734.05 to 77-2734.15; and

9 (c) If the small business corporation or limited
10 liability company is not subject to tax in another state, all of its
11 income is derived from or connected with Nebraska sources.

12 (3) Nonresidents of Nebraska who are shareholders of such
13 corporations or members of such limited liability companies shall
14 file a Nebraska income tax return and shall include in Nebraska
15 adjusted gross income their proportionate share of the corporation's
16 or limited liability company's Nebraska income as determined under
17 subsection (2) of this section.

18 (4) The nonresident shareholder or member shall execute
19 and forward to the corporation or limited liability company before
20 the filing of the corporation's or limited liability company's return
21 an agreement which states he or she will file a Nebraska income tax
22 return and pay the tax on the income derived from or connected with
23 sources in this state, and such agreement shall be attached to the
24 corporation's or limited liability company's Nebraska return for such
25 taxable year.

1 (5) For taxable years beginning or deemed to begin before
2 January 1, 2013, in the absence of the nonresident shareholder's or
3 member's executed agreement being attached to the Nebraska return,
4 the corporation or limited liability company shall remit with the
5 return an amount equal to the highest individual income tax rate
6 determined under section 77-2715.02 multiplied by the nonresident
7 shareholder's or member's share of the corporation's or limited
8 liability company's income which was derived from or attributable to
9 this state. For taxable years beginning or deemed to begin on or
10 after January 1, 2013, in the absence of the nonresident
11 shareholder's or member's executed agreement being attached to the
12 Nebraska return, the corporation or limited liability company shall
13 remit with the return an amount equal to the highest individual
14 income tax rate determined under section 77-2715.03 multiplied by the
15 nonresident shareholder's or member's share of the corporation's or
16 limited liability company's income which was derived from or
17 attributable to this state. The amount remitted shall be allowed as a
18 credit against the Nebraska income tax liability of the shareholder
19 or member.

20 (6) The Tax Commissioner may allow a nonresident
21 individual shareholder or member to not file a Nebraska income tax
22 return if the nonresident individual shareholder's or member's only
23 source of Nebraska income was his or her share of the small business
24 corporation's or limited liability company's income which was derived
25 from or attributable to sources within this state, the nonresident

1 did not file an agreement to file a Nebraska income tax return, and
2 the small business corporation or limited liability company has
3 remitted the amount required by subsection (5) of this section on
4 behalf of such nonresident individual shareholder or member. The
5 amount remitted shall be retained in satisfaction of the Nebraska
6 income tax liability of the nonresident individual shareholder or
7 member.

8 (7) A small business corporation or limited liability
9 company return shall be filed only if one or more of the shareholders
10 of the corporation or members of the limited liability company are
11 not residents of the State of Nebraska or if such corporation or
12 limited liability company has income derived from sources outside
13 this state.

14 (8) For purposes of this section, any shareholder or
15 member of the corporation or limited liability company that is a
16 grantor trust of a nonresident shall be disregarded and this section
17 shall apply as though the nonresident grantor was the shareholder or
18 member.

19 Sec. 8. Section 84-511, Revised Statutes Cumulative
20 Supplement, 2012, is amended to read:

21 84-511 The Secretary of State may provide for the
22 electronic transmission and filing of documents delivered for filing
23 under (1) the Business Corporation Act, ~~the Limited Liability Company~~
24 ~~Act,~~ the Nebraska Limited Cooperative Association Act, the Nebraska
25 Nonprofit Corporation Act, the Nebraska Professional Corporation Act,

1 the Nebraska Uniform Limited Liability Company Act, the Nebraska
2 Uniform Limited Partnership Act, the Nonstock Cooperative Marketing
3 Act, the Uniform Partnership Act of 1998, and the Trademark
4 Registration Act and (2) any filing provisions of sections 21-1301 to
5 21-1306, 21-1333 to 21-1339, and 87-208 to 87-219.01. The Secretary
6 of State shall adopt and promulgate rules and regulations to
7 implement this section.

8 Sec. 9. Original section 9-614, Reissue Revised Statutes
9 of Nebraska, and sections 67-248.02, 67-298, 70-1903, 77-2704.57,
10 77-2716, 77-2734.01, and 84-511, Revised Statutes Cumulative
11 Supplement, 2012, are repealed.

12 Sec. 10. The following sections are outright repealed:
13 Sections 21-2601, 21-2601.01, 21-2602, 21-2603, 21-2604, 21-2604.01,
14 21-2605, 21-2606, 21-2607, 21-2608, 21-2609, 21-2610, 21-2611,
15 21-2612, 21-2613, 21-2614, 21-2615, 21-2616, 21-2617, 21-2617.01,
16 21-2618, 21-2619, 21-2620, 21-2621, 21-2622, 21-2623, 21-2624,
17 21-2625, 21-2626, 21-2627, 21-2628, 21-2629, 21-2630, 21-2631,
18 21-2631.01, 21-2631.02, 21-2631.03, 21-2632, 21-2632.01, 21-2633,
19 21-2634, 21-2635, 21-2636, 21-2637, 21-2638, 21-2639, 21-2640,
20 21-2641, 21-2642, 21-2643, 21-2644, 21-2645, 21-2646, 21-2647,
21 21-2648, 21-2649, 21-2650, 21-2651, 21-2652, 21-2653, and 21-2654,
22 Reissue Revised Statutes of Nebraska.