

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 374**

Introduced by Schumacher, 22.

Read first time January 13, 2017

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2715.07, 77-2734.03, 77-5725, and 77-5726, Revised Statutes
- 3 Cumulative Supplement, 2016; to provide income tax credits for
- 4 corporate income taxes paid as prescribed; to change provisions
- 5 relating to sunset dates and the use of credits under the Nebraska
- 6 Advantage Act; to repeal the original sections; and to declare an
- 7 emergency.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2715.07, Revised Statutes Cumulative  
2 Supplement, 2016, is amended to read:

3 77-2715.07 (1) There shall be allowed to qualified resident  
4 individuals as a nonrefundable credit against the income tax imposed by  
5 the Nebraska Revenue Act of 1967:

6 (a) A credit equal to the federal credit allowed under section 22 of  
7 the Internal Revenue Code; and

8 (b) A credit for taxes paid to another state as provided in section  
9 77-2730.

10 (2) There shall be allowed to qualified resident individuals against  
11 the income tax imposed by the Nebraska Revenue Act of 1967:

12 (a) For returns filed reporting federal adjusted gross incomes of  
13 greater than twenty-nine thousand dollars, a nonrefundable credit equal  
14 to twenty-five percent of the federal credit allowed under section 21 of  
15 the Internal Revenue Code of 1986, as amended, except that for taxable  
16 years beginning or deemed to begin on or after January 1, 2015, such  
17 nonrefundable credit shall be allowed only if the individual would have  
18 received the federal credit allowed under section 21 of the code after  
19 adding back in any carryforward of a net operating loss that was deducted  
20 pursuant to such section in determining eligibility for the federal  
21 credit;

22 (b) For returns filed reporting federal adjusted gross income of  
23 twenty-nine thousand dollars or less, a refundable credit equal to a  
24 percentage of the federal credit allowable under section 21 of the  
25 Internal Revenue Code of 1986, as amended, whether or not the federal  
26 credit was limited by the federal tax liability. The percentage of the  
27 federal credit shall be one hundred percent for incomes not greater than  
28 twenty-two thousand dollars, and the percentage shall be reduced by ten  
29 percent for each one thousand dollars, or fraction thereof, by which the  
30 reported federal adjusted gross income exceeds twenty-two thousand  
31 dollars, except that for taxable years beginning or deemed to begin on or

1 after January 1, 2015, such refundable credit shall be allowed only if  
2 the individual would have received the federal credit allowed under  
3 section 21 of the code after adding back in any carryforward of a net  
4 operating loss that was deducted pursuant to such section in determining  
5 eligibility for the federal credit;

6 (c) A refundable credit as provided in section 77-5209.01 for  
7 individuals who qualify for an income tax credit as a qualified beginning  
8 farmer or livestock producer under the Beginning Farmer Tax Credit Act  
9 for all taxable years beginning or deemed to begin on or after January 1,  
10 2006, under the Internal Revenue Code of 1986, as amended;

11 (d) A refundable credit for individuals who qualify for an income  
12 tax credit under the Angel Investment Tax Credit Act, the Nebraska  
13 Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research  
14 and Development Act, or the Volunteer Emergency Responders Incentive Act;  
15 and

16 (e) A refundable credit equal to ten percent of the federal credit  
17 allowed under section 32 of the Internal Revenue Code of 1986, as  
18 amended, except that for taxable years beginning or deemed to begin on or  
19 after January 1, 2015, such refundable credit shall be allowed only if  
20 the individual would have received the federal credit allowed under  
21 section 32 of the code after adding back in any carryforward of a net  
22 operating loss that was deducted pursuant to such section in determining  
23 eligibility for the federal credit.

24 (3) There shall be allowed to all individuals as a nonrefundable  
25 credit against the income tax imposed by the Nebraska Revenue Act of  
26 1967:

27 (a) A credit for personal exemptions allowed under section  
28 77-2716.01;

29 (b) A credit for contributions to certified community betterment  
30 programs as provided in the Community Development Assistance Act. Each  
31 partner, each shareholder of an electing subchapter S corporation, each

1 beneficiary of an estate or trust, or each member of a limited liability  
2 company shall report his or her share of the credit in the same manner  
3 and proportion as he or she reports the partnership, subchapter S  
4 corporation, estate, trust, or limited liability company income;

5 (c) A credit for investment in a biodiesel facility as provided in  
6 section 77-27,236;

7 (d) A credit as provided in the New Markets Job Growth Investment  
8 Act;

9 (e) A credit as provided in the Nebraska Job Creation and Mainstreet  
10 Revitalization Act;

11 (f) A credit to employers as provided in section 77-27,238;~~and~~

12 (g) A credit as provided in the Affordable Housing Tax Credit Act;  
13 and -

14 (h) A credit for being a shareholder or an employee of a corporate  
15 taxpayer as provided in subsection (8) of section 77-2734.03.

16 (4) There shall be allowed as a credit against the income tax  
17 imposed by the Nebraska Revenue Act of 1967:

18 (a) A credit to all resident estates and trusts for taxes paid to  
19 another state as provided in section 77-2730;

20 (b) A credit to all estates and trusts for contributions to  
21 certified community betterment programs as provided in the Community  
22 Development Assistance Act; and

23 (c) A refundable credit for individuals who qualify for an income  
24 tax credit as an owner of agricultural assets under the Beginning Farmer  
25 Tax Credit Act for all taxable years beginning or deemed to begin on or  
26 after January 1, 2009, under the Internal Revenue Code of 1986, as  
27 amended. The credit allowed for each partner, shareholder, member, or  
28 beneficiary of a partnership, corporation, limited liability company, or  
29 estate or trust qualifying for an income tax credit as an owner of  
30 agricultural assets under the Beginning Farmer Tax Credit Act shall be  
31 equal to the partner's, shareholder's, member's, or beneficiary's portion

1 of the amount of tax credit distributed pursuant to subsection (4) of  
2 section 77-5211.

3 (5)(a) For all taxable years beginning on or after January 1, 2007,  
4 and before January 1, 2009, under the Internal Revenue Code of 1986, as  
5 amended, there shall be allowed to each partner, shareholder, member, or  
6 beneficiary of a partnership, subchapter S corporation, limited liability  
7 company, or estate or trust a nonrefundable credit against the income tax  
8 imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the  
9 partner's, shareholder's, member's, or beneficiary's portion of the  
10 amount of franchise tax paid to the state under sections 77-3801 to  
11 77-3807 by a financial institution.

12 (b) For all taxable years beginning on or after January 1, 2009,  
13 under the Internal Revenue Code of 1986, as amended, there shall be  
14 allowed to each partner, shareholder, member, or beneficiary of a  
15 partnership, subchapter S corporation, limited liability company, or  
16 estate or trust a nonrefundable credit against the income tax imposed by  
17 the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's,  
18 member's, or beneficiary's portion of the amount of franchise tax paid to  
19 the state under sections 77-3801 to 77-3807 by a financial institution.

20 (c) Each partner, shareholder, member, or beneficiary shall report  
21 his or her share of the credit in the same manner and proportion as he or  
22 she reports the partnership, subchapter S corporation, limited liability  
23 company, or estate or trust income. If any partner, shareholder, member,  
24 or beneficiary cannot fully utilize the credit for that year, the credit  
25 may not be carried forward or back.

26 (6) There shall be allowed to all individuals nonrefundable credits  
27 against the income tax imposed by the Nebraska Revenue Act of 1967 as  
28 provided in section 77-3604 and refundable credits against the income tax  
29 imposed by the Nebraska Revenue Act of 1967 as provided in section  
30 77-3605.

31 Sec. 2. Section 77-2734.03, Revised Statutes Cumulative Supplement,

1 2016, is amended to read:

2 77-2734.03 (1)(a) For taxable years commencing prior to January 1,  
3 1997, any (i) insurer paying a tax on premiums and assessments pursuant  
4 to section 77-908 or 81-523, (ii) electric cooperative organized under  
5 the Joint Public Power Authority Act, or (iii) credit union shall be  
6 credited, in the computation of the tax due under the Nebraska Revenue  
7 Act of 1967, with the amount paid during the taxable year as taxes on  
8 such premiums and assessments and taxes in lieu of intangible tax.

9 (b) For taxable years commencing on or after January 1, 1997, any  
10 insurer paying a tax on premiums and assessments pursuant to section  
11 77-908 or 81-523, any electric cooperative organized under the Joint  
12 Public Power Authority Act, or any credit union shall be credited, in the  
13 computation of the tax due under the Nebraska Revenue Act of 1967, with  
14 the amount paid during the taxable year as (i) taxes on such premiums and  
15 assessments included as Nebraska premiums and assessments under section  
16 77-2734.05 and (ii) taxes in lieu of intangible tax.

17 (c) For taxable years commencing or deemed to commence prior to, on,  
18 or after January 1, 1998, any insurer paying a tax on premiums and  
19 assessments pursuant to section 77-908 or 81-523 shall be credited, in  
20 the computation of the tax due under the Nebraska Revenue Act of 1967,  
21 with the amount paid during the taxable year as assessments allowed as an  
22 offset against premium and related retaliatory tax liability pursuant to  
23 section 44-4233.

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

27 (3) There shall be allowed to corporate taxpayers a refundable  
28 income tax credit under the Beginning Farmer Tax Credit Act for all  
29 taxable years beginning or deemed to begin on or after January 1, 2001,  
30 under the Internal Revenue Code of 1986, as amended.

31 (4) The changes made to this section by Laws 2004, LB 983, apply to

1 motor fuels purchased during any tax year ending or deemed to end on or  
2 after January 1, 2005, under the Internal Revenue Code of 1986, as  
3 amended.

4 (5) There shall be allowed to corporate taxpayers refundable income  
5 tax credits under the Nebraska Advantage Microenterprise Tax Credit Act  
6 and the Nebraska Advantage Research and Development Act.

7 (6) There shall be allowed to corporate taxpayers a nonrefundable  
8 income tax credit for investment in a biodiesel facility as provided in  
9 section 77-27,236.

10 (7) There shall be allowed to corporate taxpayers a nonrefundable  
11 income tax credit as provided in the Nebraska Job Creation and Mainstreet  
12 Revitalization Act, the New Markets Job Growth Investment Act, the School  
13 Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and  
14 section 77-27,238.

15 (8)(a) For taxable years beginning or deemed to begin on or after  
16 January 1, 2018, under the Internal Revenue Code of 1986, as amended,  
17 there shall be allowed to corporate taxpayers a nonrefundable income tax  
18 credit in an amount equal to one hundred percent of the corporate income  
19 taxes paid pursuant to section 77-2734.02 by such corporate taxpayer in  
20 the current taxable year. The corporate taxpayer shall not be entitled to  
21 use the credit for its own income tax liability, but shall instead  
22 distribute the credit as follows:

23 (i) One-half of the credit shall be distributed to all shareholders  
24 of the corporate taxpayer who are natural persons. The corporate taxpayer  
25 shall distribute the credit to such shareholders in the same manner as  
26 dividends are distributed. Each such shareholder may use the credit as a  
27 nonrefundable credit against his or her Nebraska income tax liability;  
28 and

29 (ii) One-half of the credit shall be distributed to all employees of  
30 the corporate taxpayer. The amount distributed to each employee shall be  
31 calculated by taking the total amount available for distribution under

1 this subdivision and multiplying such amount by a ratio, the numerator of  
2 which is the amount of such employee's wages subject to withholding for  
3 federal social security tax and the denominator of which is the amount of  
4 all employees' wages subject to withholding for federal social security  
5 tax. Each such employee may use the credit as a nonrefundable credit  
6 against his or her Nebraska income tax liability.

7 (b) Each corporate taxpayer distributing credits pursuant to this  
8 subsection shall report to the Department of Revenue, on a form  
9 prescribed by the department, the shareholders and employees receiving  
10 credits and the amount of credits each shareholder or employee received.

11 (c) Any corporate taxpayer receiving tax credits or other incentives  
12 under the Angel Investment Tax Credit Act, the Beginning Farmer Tax  
13 Credit Act, the Nebraska Advantage Act, the Nebraska Advantage  
14 Microenterprise Tax Credit Act, the Nebraska Advantage Research and  
15 Development Act, the Nebraska Advantage Rural Development Act, the  
16 Nebraska Job Creation and Mainstreet Revitalization Act, or the New  
17 Markets Job Growth Investment Act shall be ineligible for the credit  
18 provided in this subsection.

19 Sec. 3. Section 77-5725, Revised Statutes Cumulative Supplement,  
20 2016, is amended to read:

21 77-5725 (1) Applicants may qualify for benefits under the Nebraska  
22 Advantage Act in one of six tiers:

23 (a) Tier 1, investment in qualified property of at least one million  
24 dollars and the hiring of at least ten new employees. There shall be no  
25 new project applications for benefits under this tier filed after the  
26 effective date of this act December 31, 2020. All complete project  
27 applications filed on or before the effective date of this act December  
28 31, 2020, shall be considered by the Tax Commissioner and approved if the  
29 project and taxpayer qualify for benefits. Agreements may be executed  
30 with regard to completed project applications filed on or before the  
31 effective date of this act December 31, 2020. All project agreements



1 pending, approved, or entered into before such date shall continue in  
2 full force and effect;

3 (b) Tier 2, (i) investment in qualified property of at least three  
4 million dollars and the hiring of at least thirty new employees or (ii)  
5 for a large data center project, investment in qualified property for the  
6 data center of at least two hundred million dollars and the hiring for  
7 the data center of at least thirty new employees. There shall be no new  
8 project applications for benefits under this tier filed after the  
9 effective date of this act ~~December 31, 2020~~. All complete project  
10 applications filed on or before the effective date of this act ~~December~~  
11 ~~31, 2020~~, shall be considered by the Tax Commissioner and approved if the  
12 project and taxpayer qualify for benefits. Agreements may be executed  
13 with regard to completed project applications filed on or before the  
14 effective date of this act ~~December 31, 2020~~. All project agreements  
15 pending, approved, or entered into before such date shall continue in  
16 full force and effect;

17 (c) Tier 3, the hiring of at least thirty new employees. There shall  
18 be no new project applications for benefits under this tier filed after  
19 the effective date of this act ~~December 31, 2020~~. All complete project  
20 applications filed on or before the effective date of this act ~~December~~  
21 ~~31, 2020~~, shall be considered by the Tax Commissioner and approved if the  
22 project and taxpayer qualify for benefits. Agreements may be executed  
23 with regard to completed project applications filed on or before the  
24 effective date of this act ~~December 31, 2020~~. All project agreements  
25 pending, approved, or entered into before such date shall continue in  
26 full force and effect;

27 (d) Tier 4, investment in qualified property of at least ten million  
28 dollars and the hiring of at least one hundred new employees. There shall  
29 be no new project applications for benefits under this tier filed after  
30 the effective date of this act ~~December 31, 2020~~. All complete project  
31 applications filed on or before the effective date of this act ~~December~~

1 ~~31, 2020~~, shall be considered by the Tax Commissioner and approved if the  
2 project and taxpayer qualify for benefits. Agreements may be executed  
3 with regard to completed project applications filed on or before the  
4 effective date of this act ~~December 31, 2020~~. All project agreements  
5 pending, approved, or entered into before such date shall continue in  
6 full force and effect;

7 (e) Tier 5, (i) investment in qualified property of at least thirty  
8 million dollars or (ii) for the production of electricity by using one or  
9 more sources of renewable energy to produce electricity for sale as  
10 described in subdivision (1)(j) of section 77-5715, investment in  
11 qualified property of at least twenty million dollars. Failure to  
12 maintain an average number of equivalent employees as defined in section  
13 77-5727 greater than or equal to the number of equivalent employees in  
14 the base year shall result in a partial recapture of benefits. There  
15 shall be no new project applications for benefits under this tier filed  
16 after the effective date of this act ~~December 31, 2020~~. All complete  
17 project applications filed on or before the effective date of this act  
18 ~~December 31, 2020~~, shall be considered by the Tax Commissioner and  
19 approved if the project and taxpayer qualify for benefits. Agreements may  
20 be executed with regard to completed project applications filed on or  
21 before the effective date of this act ~~December 31, 2020~~. All project  
22 agreements pending, approved, or entered into before such date shall  
23 continue in full force and effect; and

24 (f) Tier 6, investment in qualified property of at least ten million  
25 dollars and the hiring of at least seventy-five new employees or the  
26 investment in qualified property of at least one hundred million dollars  
27 and the hiring of at least fifty new employees. There shall be no new  
28 project applications for benefits under this tier filed after the  
29 effective date of this act ~~December 31, 2020~~. All complete project  
30 applications filed on or before the effective date of this act ~~December~~  
31 ~~31, 2020~~, shall be considered by the Tax Commissioner and approved if the

1 project and taxpayer qualify for benefits. Agreements may be executed  
2 with regard to completed project applications filed on or before the  
3 effective date of this act ~~December 31, 2020~~. All project agreements  
4 pending, approved, or entered into before such date shall continue in  
5 full force and effect.

6 (2) When the taxpayer has met the required levels of employment and  
7 investment contained in the agreement for a tier 1, tier 2, tier 4, tier  
8 5, or tier 6 project, the taxpayer shall be entitled to the following  
9 incentives:

10 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier  
11 5, or tier 6 project or a refund of one-half of all sales and use taxes  
12 for a tier 1 project paid under the Local Option Revenue Act, the  
13 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813  
14 from the date of the application through the meeting of the required  
15 levels of employment and investment for all purchases, including rentals,  
16 of:

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

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

22 (iii) Tangible personal property by a contractor or repairperson  
23 after appointment as a purchasing agent of the owner of the improvement  
24 to real estate when such property is incorporated into real estate as a  
25 part of a project. The refund shall be based on fifty percent of the  
26 contract price, excluding any land, as the cost of materials subject to  
27 the sales and use tax;

28 (iv) Tangible personal property by a contractor or repairperson  
29 after appointment as a purchasing agent of the taxpayer when such  
30 property is annexed to, but not incorporated into, real estate as a part  
31 of a project. The refund shall be based on the cost of materials subject

1 to the sales and use tax that were annexed to real estate; and

2 (v) Tangible personal property by a contractor or repairperson after  
3 appointment as a purchasing agent of the taxpayer when such property is  
4 both (A) incorporated into real estate as a part of a project and (B)  
5 annexed to, but not incorporated into, real estate as a part of a  
6 project. The refund shall be based on fifty percent of the contract  
7 price, excluding any land, as the cost of materials subject to the sales  
8 and use tax; and

9 (b) A refund of all sales and use taxes for a tier 2, tier 4, tier  
10 5, or tier 6 project or a refund of one-half of all sales and use taxes  
11 for a tier 1 project paid under the Local Option Revenue Act, the  
12 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on  
13 the types of purchases, including rentals, listed in subdivision (a) of  
14 this subsection for such taxes paid during each year of the entitlement  
15 period in which the taxpayer is at or above the required levels of  
16 employment and investment.

17 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier  
18 4 project shall be entitled to a credit equal to three percent times the  
19 average wage of new employees times the number of new employees if the  
20 average wage of the new employees equals at least sixty percent of the  
21 Nebraska average annual wage for the year of application. The credit  
22 shall equal four percent times the average wage of new employees times  
23 the number of new employees if the average wage of the new employees  
24 equals at least seventy-five percent of the Nebraska average annual wage  
25 for the year of application. The credit shall equal five percent times  
26 the average wage of new employees times the number of new employees if  
27 the average wage of the new employees equals at least one hundred percent  
28 of the Nebraska average annual wage for the year of application. The  
29 credit shall equal six percent times the average wage of new employees  
30 times the number of new employees if the average wage of the new  
31 employees equals at least one hundred twenty-five percent of the Nebraska

1 average annual wage for the year of application. For computation of such  
2 credit:

3 (a) Average annual wage means the total compensation paid to  
4 employees during the year at the project who are not base-year employees  
5 and who are paid wages equal to at least sixty percent of the Nebraska  
6 average weekly wage for the year of application, excluding any  
7 compensation in excess of one million dollars paid to any one employee  
8 during the year, divided by the number of equivalent employees making up  
9 such total compensation;

10 (b) Average wage of new employees means the average annual wage paid  
11 to employees during the year at the project who are not base-year  
12 employees and who are paid wages equal to at least sixty percent of the  
13 Nebraska average weekly wage for the year of application, excluding any  
14 compensation in excess of one million dollars paid to any one employee  
15 during the year; and

16 (c) Nebraska average annual wage means the Nebraska average weekly  
17 wage times fifty-two.

18 (4) Any taxpayer who qualifies for a tier 6 project shall be  
19 entitled to a credit equal to ten percent times the total compensation  
20 paid to all employees, other than base-year employees, excluding any  
21 compensation in excess of one million dollars paid to any one employee  
22 during the year, employed at the project.

23 (5) Any taxpayer who has met the required levels of employment and  
24 investment for a tier 2 or tier 4 project shall receive a credit equal to  
25 ten percent of the investment made in qualified property at the project.  
26 Any taxpayer who has met the required levels of investment and employment  
27 for a tier 1 project shall receive a credit equal to three percent of the  
28 investment made in qualified property at the project. Any taxpayer who  
29 has met the required levels of investment and employment for a tier 6  
30 project shall receive a credit equal to fifteen percent of the investment  
31 made in qualified property at the project.

1 (6) The credits prescribed in subsections (3), (4), and (5) of this  
2 section shall be allowable for compensation paid and investments made  
3 during each year of the entitlement period that the taxpayer is at or  
4 above the required levels of employment and investment.

5 (7) The credit prescribed in subsection (5) of this section shall  
6 also be allowable during the first year of the entitlement period for  
7 investment in qualified property at the project after the date of the  
8 application and before the required levels of employment and investment  
9 were met.

10 (8)(a) Property described in subdivisions (8)(c)(i) through (v) of  
11 this section used in connection with a project or projects and acquired  
12 by the taxpayer, whether by lease or purchase, after the date the  
13 application was filed, shall constitute separate classes of property and  
14 are eligible for exemption under the conditions and for the time periods  
15 provided in subdivision (8)(b) of this section.

16 (b)(i) A taxpayer who has met the required levels of employment and  
17 investment for a tier 4 project shall receive the exemption of property  
18 in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer  
19 who has met the required levels of employment and investment for a tier 6  
20 project shall receive the exemption of property in subdivisions (8)(c)  
21 (ii), (iii), (iv), and (v) of this section. Such property shall be  
22 eligible for the exemption from the first January 1 following the end of  
23 the year during which the required levels were exceeded through the ninth  
24 December 31 after the first year property included in subdivisions (8)(c)  
25 (ii), (iii), (iv), and (v) of this section qualifies for the exemption.

26 (ii) A taxpayer who has filed an application that describes a tier 2  
27 large data center project or a project under tier 4 or tier 6 shall  
28 receive the exemption of property in subdivision (8)(c)(i) of this  
29 section beginning with the first January 1 following the acquisition of  
30 the property. The exemption shall continue through the end of the period  
31 property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of

1 this section qualifies for the exemption.

2 (iii) A taxpayer who has filed an application that describes a tier  
3 2 large data center project or a tier 5 project that is sequential to a  
4 tier 2 large data center project for which the entitlement period has  
5 expired shall receive the exemption of all property in subdivision (8)(c)  
6 of this section beginning any January 1 after the acquisition of the  
7 property. Such property shall be eligible for exemption from the tax on  
8 personal property from the January 1 preceding the first claim for  
9 exemption approved under this subdivision through the ninth December 31  
10 after the year the first claim for exemption is approved.

11 (iv) A taxpayer who has a project for an Internet web portal or a  
12 data center and who has met the required levels of employment and  
13 investment for a tier 2 project or the required level of investment for a  
14 tier 5 project, taking into account only the employment and investment at  
15 the web portal or data center project, shall receive the exemption of  
16 property in subdivision (8)(c)(ii) of this section. Such property shall  
17 be eligible for the exemption from the first January 1 following the end  
18 of the year during which the required levels were exceeded through the  
19 ninth December 31 after the first year any property included in  
20 subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies  
21 for the exemption.

22 (v) Such investment and hiring of new employees shall be considered  
23 a required level of investment and employment for this subsection and for  
24 the recapture of benefits under this subsection only.

25 (c) The following property used in connection with such project or  
26 projects and acquired by the taxpayer, whether by lease or purchase,  
27 after the date the application was filed shall constitute separate  
28 classes of personal property:

29 (i) Turbine-powered aircraft, including turboprop, turbojet, and  
30 turbofan aircraft, except when any such aircraft is used for fundraising  
31 for or for the transportation of an elected official;

1           (ii) Computer systems, made up of equipment that is interconnected  
2 in order to enable the acquisition, storage, manipulation, management,  
3 movement, control, display, transmission, or reception of data involving  
4 computer software and hardware, used for business information processing  
5 which require environmental controls of temperature and power and which  
6 are capable of simultaneously supporting more than one transaction and  
7 more than one user. A computer system includes peripheral components  
8 which require environmental controls of temperature and power connected  
9 to such computer systems. Peripheral components shall be limited to  
10 additional memory units, tape drives, disk drives, power supplies,  
11 cooling units, data switches, and communication controllers;

12           (iii) Depreciable personal property used for a distribution  
13 facility, including, but not limited to, storage racks, conveyor  
14 mechanisms, forklifts, and other property used to store or move products;

15           (iv) Personal property which is business equipment located in a  
16 single project if the business equipment is involved directly in the  
17 manufacture or processing of agricultural products; and

18           (v) For a tier 2 large data center project or tier 6 project, any  
19 other personal property located at the project.

20           (d) In order to receive the property tax exemptions allowed by  
21 subdivision (8)(c) of this section, the taxpayer shall annually file a  
22 claim for exemption with the Tax Commissioner on or before May 1. The  
23 form and supporting schedules shall be prescribed by the Tax Commissioner  
24 and shall list all property for which exemption is being sought under  
25 this section. A separate claim for exemption must be filed for each  
26 project and each county in which property is claimed to be exempt. A copy  
27 of this form must also be filed with the county assessor in each county  
28 in which the applicant is requesting exemption. The Tax Commissioner  
29 shall determine whether a taxpayer is eligible to obtain exemption for  
30 personal property based on the criteria for exemption and the eligibility  
31 of each item listed for exemption and, on or before August 1, certify



1 such to the taxpayer and to the affected county assessor.

2 (9)(a) The investment thresholds in this section for a particular  
3 year of application shall be adjusted by the method provided in this  
4 subsection, except that the investment threshold for a tier 5 project  
5 described in subdivision (1)(e)(ii) of this section shall not be  
6 adjusted.

7 (b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier  
8 5 projects described in subdivision (1)(e)(ii) of this section, beginning  
9 October 1, 2006, and each October 1 thereafter, the average Producer  
10 Price Index for all commodities, published by the United States  
11 Department of Labor, Bureau of Labor Statistics, for the most recent  
12 twelve available periods shall be divided by the Producer Price Index for  
13 the first quarter of 2006 and the result multiplied by the applicable  
14 investment threshold. The investment thresholds shall be adjusted for  
15 cumulative inflation since 2006.

16 (c) For tier 6, beginning October 1, 2008, and each October 1  
17 thereafter, the average Producer Price Index for all commodities,  
18 published by the United States Department of Labor, Bureau of Labor  
19 Statistics, for the most recent twelve available periods shall be divided  
20 by the Producer Price Index for the first quarter of 2008 and the result  
21 multiplied by the applicable investment threshold. The investment  
22 thresholds shall be adjusted for cumulative inflation since 2008.

23 (d) For a tier 2 large data center project, beginning October 1,  
24 2012, and each October 1 thereafter, the average Producer Price Index for  
25 all commodities, published by the United States Department of Labor,  
26 Bureau of Labor Statistics, for the most recent twelve available periods  
27 shall be divided by the Producer Price Index for the first quarter of  
28 2012 and the result multiplied by the applicable investment threshold.  
29 The investment thresholds shall be adjusted for cumulative inflation  
30 since 2012.

31 (e) If the resulting amount is not a multiple of one million

1 dollars, the amount shall be rounded to the next lowest one million  
2 dollars.

3 (f) The investment thresholds established by this subsection apply  
4 for purposes of project qualifications for all applications filed on or  
5 after January 1 of the following year for all years of the project.  
6 Adjustments do not apply to projects after the year of application.

7 Sec. 4. Section 77-5726, Revised Statutes Cumulative Supplement,  
8 2016, is amended to read:

9 77-5726 (1)(a) The credits prescribed in section 77-5725 for a year  
10 shall be established by filing the forms required by the Tax Commissioner  
11 with the income tax return for the taxable year which includes the end of  
12 the year the credits were earned. The credits may be used and shall be  
13 applied in the order in which they were first allowed. The credits may be  
14 used after any other nonrefundable credits to reduce the taxpayer's  
15 income tax liability imposed by sections 77-2714 to 77-27,135. Credits  
16 may be used beginning with the taxable year which includes December 31 of  
17 the year the required minimum levels were reached. The last year for  
18 which credits may be used is the taxable year which includes December 31  
19 of the last year of the carryover period. Any decision on how part of the  
20 credit is applied shall not limit how the remaining credit could be  
21 applied under this section.

22 (b) Except as provided in subdivision (1)(c) of this section, the  
23 ~~The~~ taxpayer may use the credit provided in subsection (3) of section  
24 77-5725 to reduce the taxpayer's income tax withholding employer or payor  
25 tax liability under section 77-2756 or 77-2757 to the extent such  
26 liability is attributable to the number of new employees at the project,  
27 excluding any compensation in excess of one million dollars paid to any  
28 one employee during the year. Except as provided in subdivision (1)(c) of  
29 this section, the ~~The~~ taxpayer may use the credit provided in subsection  
30 (4) of section 77-5725 to reduce the taxpayer's income tax withholding  
31 employer or payor tax liability under section 77-2756 or 77-2757 to the

1 extent such liability is attributable to all employees employed at the  
2 project, other than base-year employees and excluding any compensation in  
3 excess of one million dollars paid to any one employee during the year.  
4 To the extent of the credit used, such withholding shall not constitute  
5 public funds or state tax revenue and shall not constitute a trust fund  
6 or be owned by the state. The use by the taxpayer of the credit shall not  
7 change the amount that otherwise would be reported by the taxpayer to the  
8 employee under section 77-2754 as income tax withheld and shall not  
9 reduce the amount that otherwise would be allowed by the state as a  
10 refundable credit on an employee's income tax return as income tax  
11 withheld under section 77-2755.

12 For a tier 1, tier 2, tier 3, or tier 4 project, the amount of  
13 credits used against income tax withholding shall not exceed the  
14 withholding attributable to new employees employed at the project,  
15 excluding any compensation in excess of one million dollars paid to any  
16 one employee during the year.

17 For a tier 6 project, the amount of credits used against income tax  
18 withholding shall not exceed the withholding attributable to all  
19 employees employed at the project, other than base-year employees and  
20 excluding any compensation in excess of one million dollars paid to any  
21 one employee during the year.

22 If the amount of credit used by the taxpayer against income tax  
23 withholding exceeds this amount, the excess withholding shall be returned  
24 to the Department of Revenue in the manner provided in section 77-2756,  
25 such excess amount returned shall be considered unused, and the amount of  
26 unused credits may be used as otherwise permitted in this section or  
27 shall carry over to the extent authorized in subdivision (1)(f) ~~(1)(e)~~ of  
28 this section.

29 (c) No agreement executed on or after the effective date of this act  
30 shall allow a taxpayer to use a credit to reduce the taxpayer's income  
31 tax withholding employer or payor tax liability under section 77-2756 or

1 77-2757.

2 (d) ~~(e)~~ Credits may be used to obtain a refund of sales and use  
3 taxes under the Local Option Revenue Act, the Nebraska Revenue Act of  
4 1967, and sections 13-319, 13-324, and 13-2813 which are not otherwise  
5 refundable that are paid on purchases, including rentals, for use at the  
6 project for a tier 1, tier 2, tier 3, or tier 4 project or for use within  
7 this state for a tier 2 large data center project or a tier 6 project.

8 (e) ~~(d)~~ The credits earned for a tier 6 project may be used to  
9 obtain a payment from the state equal to the real property taxes due  
10 after the year the required levels of employment and investment were met  
11 and before the end of the carryover period, for real property that is  
12 included in such project and acquired by the taxpayer, whether by lease  
13 or purchase, after the date the application was filed. Once the required  
14 levels of employment and investment for a tier 2 large data center  
15 project have been met, the credits earned for a tier 2 large data center  
16 project may be used to obtain a payment from the state equal to the real  
17 property taxes due after the year of application and before the end of  
18 the carryover period, for real property that is included in such project  
19 and acquired by the taxpayer, whether by lease or purchase, after the  
20 date the application was filed. The payment from the state shall be made  
21 only after payment of the real property taxes have been made to the  
22 county as required by law. Payments shall not be allowed for any taxes  
23 paid on real property for which the taxes are divided under section  
24 18-2147 or 58-507.

25 (f) ~~(e)~~ Credits may be carried over until fully utilized, except  
26 that such credits may not be carried over more than nine years after the  
27 year of application for a tier 1 or tier 3 project, fourteen years after  
28 the year of application for a tier 2 or tier 4 project, or more than one  
29 year past the end of the entitlement period for a tier 6 project.

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

1 (b) Refund claims shall be filed no more than once each quarter for  
2 refunds under the Nebraska Advantage Act, except that any claim for a  
3 refund in excess of twenty-five thousand dollars may be filed at any  
4 time.

5 (c) Refund claims for materials purchased by a purchasing agent  
6 shall include:

7 (i) A copy of the purchasing agent appointment;

8 (ii) The contract price; and

9 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of  
10 section 77-5725, a certification by the contractor or repairperson of the  
11 percentage of the materials incorporated into or annexed to the project  
12 on which sales and use taxes were paid to Nebraska after appointment as  
13 purchasing agent; or

14 (B) For refunds under subdivision (2)(a)(iv) of section 77-5725, a  
15 certification by the contractor or repairperson of the percentage of the  
16 contract price that represents the cost of materials annexed to the  
17 project and the percentage of the materials annexed to the project on  
18 which sales and use taxes were paid to Nebraska after appointment as  
19 purchasing agent.

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

28 (e) If a claim for a refund of sales and use taxes under the Local  
29 Option Revenue Act or sections 13-319, 13-324, and 13-2813 of more than  
30 twenty-five thousand dollars is filed by June 15 of a given year, the  
31 refund shall be made on or after November 15 of the same year. If such a

1 claim is filed on or after June 16 of a given year, the refund shall not  
2 be made until on or after November 15 of the following year. The Tax  
3 Commissioner shall notify the affected city, village, county, or  
4 municipal county of the amount of refund claims of sales and use taxes  
5 under the Local Option Revenue Act or sections 13-319, 13-324, and  
6 13-2813 that are in excess of twenty-five thousand dollars on or before  
7 July 1 of the year before the claims will be paid under this section.

8 (f) Interest shall not be allowed on any taxes refunded under the  
9 Nebraska Advantage Act.

10 (3) The appointment of purchasing agents shall be recognized for the  
11 purpose of changing the status of a contractor or repairperson as the  
12 ultimate consumer of tangible personal property purchased after the date  
13 of the appointment which is physically incorporated into or annexed to  
14 the project and becomes the property of the owner of the improvement to  
15 real estate or the taxpayer. The purchasing agent shall be jointly liable  
16 for the payment of the sales and use tax on the purchases with the owner  
17 of the property.

18 (4) A determination that a taxpayer is not engaged in a qualified  
19 business or has failed to meet or maintain the required levels of  
20 employment or investment for incentives, exemptions, or recapture may be  
21 protested within sixty days after the mailing of the written notice of  
22 the proposed determination. If the notice of proposed determination is  
23 not protested within the sixty-day period, the proposed determination is  
24 a final determination. If the notice is protested, the Tax Commissioner  
25 shall issue a written order resolving such protests. The written order of  
26 the Tax Commissioner resolving a protest may be appealed to the district  
27 court of Lancaster County within thirty days after the issuance of the  
28 order.

29 Sec. 5. Original sections 77-2715.07, 77-2734.03, 77-5725, and  
30 77-5726, Revised Statutes Cumulative Supplement, 2016, are repealed.

31 Sec. 6. Since an emergency exists, this act takes effect when

1 passed and approved according to law.