

A BALANCED AND FAIR TAX SYSTEM FOR NEBRASKANS

January 21, 1992

Final Report of a Task Force on Nebraska Tax Reform

Commissioned by the Center for Rural Affairs
Walthill, Nebraska

TAX REFORM TASK FORCE

This report was prepared by a task force appointed by the Center for Rural Affairs Board of Directors to take a comprehensive look at Nebraska's tax structure. The group consisted of Center Board members and others, and was deliberately drawn to reflect the diversity of the state's economic and social structure. The members are:

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PREFACE

The Nebraska Tax Reform Task Force is pleased to submit this report to the Board of Directors of the Center for Rural Affairs. Our commission was to make a comprehensive review of Nebraska's tax system and to recommend changes.

The task force was well chosen by the Center Board to reflect the social and economic diversity of Nebraska. Our membership included not only farmers and ranchers, but urban and rural social workers, an accountant, an attorney, and a church official. In all, there were four members from rural Nebraska, two from Omaha, and one from Lincoln. The four rural Nebraskans were from the Southeast, the Northeast, the Panhandle, and the Sandhills.

In all our work, this diversity of views and interests represented a blessing, not a curse. We feel strongly that tax issues in Nebraska are too often wrongly perceived as separating along urban versus rural lines. While our task force did not always agree, our differences were constructive and led to fruitful dialogue that demonstrated clearly that deeply held values such as balance, fairness, and mutuality, ultimately overwhelm petty self-interest.

We are convinced that most Nebraskans share those values, and will welcome a tax plan that expresses them. That is the plan we hope we have presented in this report.

The task force wishes to thank the following people for their assistance in preparing this report: Bill Lock, Kearney State University and a consultant to the State Department of Revenue, Franz Schwarz, Dennis Donner, and Melissa Jaworski of the Department of Revenue, Eric Byrd of the Legislative Fiscal Analyst's Office, and Marty Strange of the Center staff.

As Nebraska continues to struggle with defining a tax system that works for the entire state, we hope those who have approached the issue with too much self interest in heart will consider their interest as citizens in a democracy. For in a democracy, taxation is the most basic means by which we express our commitment to each other.

Those who would lead Nebraska should especially think in these terms. We are convinced that most people do not resent paying taxes as much as they resent being treated unfairly by the tax system. If people are expected by their leaders to act selfishly, they will. If instead, they are expected to act generously, and compassionately, they will. In preparing this report, we happened on a comment by the Chinese philosopher Confucius that expresses this idea well. Asked by the King what could be done to stop the rampant thievery in the kingdom, Confucius answered: "If you, sir, were not so covetous yourself, your people would not steal if you asked them to."

Respectfully submitted, January 21, 1992.

Nebraska Tax Reform Task Force

Clark Nichols, Chair

A BALANCED AND FAIR TAX SYSTEM FOR NEBRASKANS

SUMMARY

BROAD GOALS:

1. Reduce the share of total state and local revenue that comes from property taxes to one-third, down from the 46 percent that was current before the recent court decisions.
2. Broaden sales tax base and lower rates.
3. Make the overall tax system less regressive.

MAJOR ELEMENTS

1. Eliminate all personal property taxes but require taxpayers to add- back the amount deducted as personal property depreciation on their federal tax return to their Nebraska taxable income.
2. Lower average property tax levy by 20%, from .02309 to .01856.
3. Place a 1.5% surcharge on income from intangible property, exempting the first \$10,000 in such income received by natural persons (no exemption for corporations).
4. Lower sales tax rates on goods and services from 5% TO 4% and provide a \$25 per person credit.
5. Place a sales tax on services (with exemptions for health and education expenditures) and on energy used in agriculture, and manufacturing.
6. Place a 1% transaction tax on real estate purchases, with \$100,000 lifetime exemptions for each natural person on each of two categories: (1) owner-occupied residential real estate, and (2) owner-operated farm/business real estate.
7. Add four new tax brackets for persons with income above \$100,000 with marginal rates graduating from 8.07% to 9.8% (for those with income above \$1,000,000).
8. Add a third corporate tax bracket for corporations with taxable income over \$1,000,000. Restore the three-part formula for calculating corporate taxable income. Increase rates across-the-board by 15%.
9. Increase alcohol and tobacco taxes by 10%.

SUMMARY OF CHANGES IN RELATIVE SHARE OF TAX BURDEN BY TYPE REVENUE SOURCE

Source	-----1991-----		-----Proposed-----	
	Amount	Percent	Amount	Percent
	\$mil	%	\$mil	%
Ind. Income Tax	652.4	24.6	777.1	29.3
Corp. Income Tax	72.0	2.7	105.9	4.0
Intangibles Tax	--	0.0	48.3	1.8
Sales Tax	582.3	21.9	693.2	26.1
Property Tax	1,217.6	45.9	894.5	33.7
Miscellaneous	130.0	4.9	135.3	5.1
Total	2,654.3	100.0	2,654.3	100.0

I. INTRODUCTION

Nebraska's tax system has been thrown into chaos by recent court decisions that interpret the Nebraska Constitution to require that all personal property be taxed. Nebraskans should seize the opportunity created by this crisis to make fundamental changes in the way we pay for the basic public services of state and local government.

The current system suffers from three major faults:

** Despite progress in recent years, Nebraska still depends too heavily on the property tax. It provided 46 percent of all state and local revenue in 1990, the last year in which personal property taxes were collected.

** Nebraska's overall tax system is too regressive, both because it depends too much on property and sales taxes, and because its income tax system does not ask the wealthy to carry their weight.

** Nebraska's sales tax base is too narrow, exempting most of the rapidly growing service sector except those services which are most widely consumed by low and moderate income people.

Nebraska's Tax System is Too Regressive

Nebraska is particularly hard on the poor. According to Citizens for Tax Justice, the 20 percent of our citizens with lowest income pay 16.9 percent of their income in state and local taxes. That is the third highest rate in the nation for the lowest income group. By contrast, the one percent of our citizens who receive the highest incomes, pay only 6.7 percent of that income for state and local taxes.

Nebraska's tax system is regressive because we rely too heavily on the most regressive taxes -- sales and property taxes account for over two-thirds of state and local revenue (sales tax = 22%, property tax = 46%) The one-fifth of the taxpayers who are in the lowest tax brackets pay well over twice as high a percentage of their income in sales taxes as do the one-fifth with the highest incomes. For property taxes, they pay about three times as much.

These regressive taxes are sometimes made more regressive by exclusion from their base of items consumed or owned by high income people. For example, the sales tax does not include services generally consumed by the wealthiest people, and the property tax does not include a tax on "intangible" property like stocks and bonds.

The sales tax is especially onerous in Nebraska because the tax base is so narrow. Basically, we tax most *goods*, but only a few *services*. This means that only about half of the potential sales tax base is actually subject to taxes. But worse, the services we do tax are those most likely to be consumed by the average citizen, while those that might be

more likely consumed by higher income individuals and corporations are not taxed.

For example, Nebraska taxes utility services -- telephones, electricity, water, natural gas, sewer and refuse collection -- as well as photo development and photocopying, sports and entertainment admissions, cable TV, video movie rental. But it does not tax professional services (such as attorneys, engineers, and accountants), data processing services, debt collection services, advertising, broker fees and investment counseling, or swimming pool maintenance.

Moreover, it is the services sector of our economy that is growing fastest. By excluding so many services from the tax base, we not only make the sales tax more regressive, but we lose revenue from a growing sector.

Regressive taxes like the sales and property taxes are partially offset by the income tax, which is the only tax that generates proportionally more revenue from the wealthy, thereby reducing the burden on other taxpayers. However, Nebraska relies on the income tax for only 24.6 percent of state and local taxes (if you include corporate income tax, the figure is 27.3 percent.)

Such regressivity violates the first principle of good tax policy: To raise revenue, you've got to go where the money is.

The victims of these faults are many: Children who live in urban and rural districts with a property tax base too poor to support an educational system equal to that provided in other communities; farmers who pay a far greater share of their income in taxes than others; the middle income groups and working poor who pay for too much property tax (on their home or in their rent) and too much sales tax for basic purchases.

A Tax System for Nebraskans

We propose a framework for change. Nebraskans should adopt a tax system that accomplishes three closely inter-related goals:

- (1) Reduce reliance on property tax to no more than about one-third of total state and local revenue -- down from the 46% level prior to the recent court decisions.
- (2) Broaden the tax base and lower the rates for the sales tax.
- (3) Make the overall tax system less regressive primarily by reforming both the individual and the corporate income tax structures and increasing the share of total revenue which comes from the income tax.

These measures will make Nebraska's tax system better.

It will be broader, more stable, and more efficient. It will provide more *balanced* sources of revenue, with about one-third of its revenue from income taxes, one-third from property taxes, and one-third from a combination of sales and miscellaneous taxes. It will be *fairer* because it will be based more on ability to pay. It will be a balanced and fair tax system.

The Civic Climate

Is it possible to reach these goals? The answer is "yes," and in the following section, we detail a proposal for doing so.

But is it politically feasible? That depends on whether the people of Nebraska are prepared to overcome political barriers that frustrate efforts to address these issues.

Nebraska's current tax system is the product of a combination of factors that have worked together to weaken the *civic climate* within which tax policy decisions are made.

In 1987, some powerful business interests pushed through the legislature sweeping tax changes that granted them huge tax breaks and made the income tax system much more regressive, shifting the burden from the wealthy to the middle class, from expanding businesses to those struggling to survive, and from growing communities to those in trouble.

These changes, and the politically heavy handed means by which they were accomplished, helped sour the civic climate of Nebraska. Because the wealthy refuse to pay their fair share, everyone else feels they should pay less as well. Our capacity to provide essential public services and to govern are at stake. Taxation is the most basic means by which the citizens of a democracy express their mutual commitments.

Rural groups have added to the problem by being too ambivalent about tax reform, demanding property tax relief but balking over nearly every proposal to shift to the income and sales taxes for fear that rural areas will lose control over the purse strings.

This "local control" issue stands between us and meaningful property tax reform. While concern over loss of control is legitimate, it is not sufficient cause to oppose a shift to state revenue sources. Ultimately, the only way to reduce dependence on the burdensome property tax is to address directly the issue of state aid distribution. That

process was begun in the debate over the Tax Equities and Educational Opportunities Support Act (LB 1059), and while the issue is not fully resolved and may never be, we are now past the point of return.

We have long believed that tax issues have been unnecessarily divisive, pitting rural against urban parts of the state. We reject that division out of hand. For us, the issue is not whether agriculture *as a sector*, or residential property owners *as a class*, or urban businesses *as a group* pay more or less in taxes.

The issue is that the current tax system asks too much of those with too little to give, and asks too little of those who have plenty, no matter their address or their occupation.

Rural and urban people must now work together to make a balanced and fair tax system. If we can do so, we can put the troublesome "urban vs rural" division behind us and produce a system that:

- (1) Is fair to all Nebraskans and produces stable tax revenues from a balanced combination of sales, income, and property taxes;
- (2) Distributes revenue to local governments in accordance with legitimate needs;
- (3) Provides equal access to quality government services to all people in all parts of the state; and
- (4) Leaves crucial decision making about important public institutions, especially the schools, in the hands of the community those institutions serve.

This report addresses the first of those challenges by proposing a tax system that meets the three goals identified above: sharply lower property taxes, a broader sales tax with lower rates, and a less regressive income tax system.

Ask yourself this question: How many Nebraskans would support a tax system in which real estate and sales tax rates were lowered 20 percent, each person received a refund of the first \$25.00 paid in sales taxes each year, and over 98 percent of Nebraskans paid no additional income tax? We believe most Nebraskans would support that system, whether they are urban or rural, farmers or laborers or retirees.

We outline such a plan in Part III. But before doing so, we want to make clear the basic principles we believe should guide state tax policy making.

II. PRINCIPLES OF TAX POLICY

Principles that guide public policy are naturally sometimes in conflict with each other. The challenge is to adopt a policy that either (1) reconciles the conflict between principles, (2) seeks a compromise that minimizes the damage to any of the principles, or (3) acknowledges that some principles are more important than others. No tax system (or other public policy) is perfect. It can only be the best possible in light of our values and beliefs. These are the principles that have guided us in developing the tax proposals we present in the following sections of this report.

We believe that those who enjoy the personal freedoms and political rights of a democratic society are obligated to support government. Indeed, a government that does not depend on its citizens for financial support is not likely to remain democratic. In turn, it is the duty of every citizen in a democratic society to participate in tax policymaking. The benefit of participating, both as taxpayer and as tax policy maker, is a fair and efficient tax system.

We also believe that the most basic services of government should be paid for from the broadest sources of revenue, and that everyone should participate in the tax system, even if this means that some taxes place a heavier burden on lower income people than on others. Everyone should be a "stakeholder" in the tax system.

On the whole, however, participation in the tax system should be based on ability to pay, with the rate of taxation increasing as ability to pay increases. Therefore, although some parts of the tax system may impact the poor more than others, the tax system as a whole should be progressive.

A taxpayer's ability to pay is based on (1) income, and (2) wealth. Generally speaking, income is the better measure of ability to pay for most taxpayers, because most wealth is invested to produce income. For the most part, therefore, income producing property should be taxed on its ability to

produce income. Moreover, in some instances where administrative convenience is served, it is better to tax the income than the property. But no matter which method of taxation is used, we see no reason to select income-producing tangible property for taxation while excluding intangible property that produces income.

More generally, it is important that the tax base be as broad as possible so that rates can be as low as possible. The privilege of exemption should be extended only rarely and only for very good cause.

We therefore also believe that taxes on consumption (primarily sales and excise taxes) should apply to all sectors of the economy, including services as well as goods, including agriculture as well as other businesses. But because sales taxes are particularly regressive, a minimum threshold of necessities should not be subjected to a sales tax.

We also believe that tax policy should foster competition and discourage the concentration of wealth that is otherwise inherent in a free market economy. When possible, it should encourage broad participation in the economy, including participation in the ownership of productive assets.

Tax policy should not generally subsidize capital investment. Subsidies to capital distort investment decisions, lead to inefficiency, favor taxpayers with capital and disfavor taxpayers without capital, shift production from less to more capital-intensive methods, and may encourage concentration of production in a few urban areas.

Finally, we believe that taxes should be explicit, overt, and direct, not implicit, covert, or indirect. They should be easily calculated by the taxpayer, conveniently collected, and vigorously enforced. Moreover, taxes should be uniformly applied to taxpayers in similar circumstances.

III. A BALANCED AND FAIR TAX PLAN FOR NEBRASKANS

We outline a plan that we believe accomplishes the three goals of reducing dependence on property taxes, broadening the base and lowering the rates on sales taxes, and making the overall system generally more progressive.

In this analysis, we use data supplied to us by the Nebraska Department of Revenue and the Legislative Fiscal Analyst. When possible, we use estimates of the revenue impact of various elements of our plan made by staff in these offices. When not, we consulted with these staff on methodologies for our own estimates. We are grateful for the assistance provided by the Revenue Department and the Legislative Fiscal Analyst.

Clearly, the proposals here need to be further analyzed using data bases and computer programs available to the Department of Revenue and the Legislative Fiscal Office. We welcome that analysis and stand prepared to alter our conclusions based on its findings.

A. PROPERTY TAX

Summary Recommendation: *Eliminate the personal property tax and require Nebraska taxpayers to "add-back" the federal deduction they take for personal property depreciation to their Nebraska taxable income.*

Although unpopular, the property tax is probably here to stay, and it does have some rationale. Property tax is appropriate to pay for services that primarily or largely benefit property and property owners (fire service, roads and bridges). More important, from a fiscal policy perspective, the property tax is a relatively stable source of revenue for three reasons: (1) property values do not fluctuate as much or as rapidly as income in rural counties, and (2) since the tax obligation is "secured" by the property itself, people almost always pay property taxes, and (3) real property cannot be moved to avoid the tax, while residence can be moved to avoid income taxes, and purchases can be made elsewhere to avoid sales taxes.

The Personal Property Tax

The personal property tax has always been a difficult and expensive tax to administer because it requires the identification and assessment of highly mobile and diverse property that generally changes in value significantly from year to year. Moreover, under the court's interpretation, personal property includes not only farm and business

machinery and equipment, but also the inventory of goods which businesses sell or process into salable products.

While we generally applaud efforts to broaden the tax base, we are aware of the administrative difficulty in tracking down and assessing many forms of personal property. This tax falls unequally on the honest taxpayer who freely reports and accurately values his or her personal property.

The 3-R Committee Proposal

To address the personal property tax crisis, the Governor appointed the Revenue Restructuring and Revitalization Committee (the "3-R" Committee).

The 3-R Committee report calls for minimal action only to circumvent the immediate effect of the court decisions. It does not reduce overall dependence on the property tax. It does not provide for an equitable redistribution of the tax obligation.

Moreover, in order to accomplish its limited purposes, the 3-R Committee proposes to add to the irrationality of the tax system. Some breeding stock are taxed; most are not. Some income producing property is taxed; other is not. Farmers will pay more than non-farm businesses on personal property of identical value.

The 3-R Committee considered two alternatives to the traditional *ad valorem* system of taxing personal property.

**** Continue to tax personal property, including farm machinery and equipment (but exempting inventory, including livestock being raised for slaughter), but base the tax on the "net book value" of the property after deductions for depreciation taken on the federal tax return.**

**** Eliminate the personal property tax, but impose a 3 percent surcharge on the amount of personal property depreciation deducted by the taxpayer each year from federal taxable income.**

The Committee adopted the former approach. This approach still depends on willing taxpayers to accurately report and honestly value their personal property to the county tax assessor. True, the value is now determined using the depreciation rules prescribed by the federal government. But this does little to assure more accurate property tax reporting. The taxpayer reports to IRS only the amount of annual depreciation to be deducted from income, **not** the cost basis of the property or the remaining value after depreciation.

And of particular importance, the taxpayer does not have to identify the location of the property. That means that taxpayers with personal property in more than one county can "shift" reported personal property to counties with low levies and away from counties with high levies. If the taxpayer has personal property in more than one state, he or she can underreport that property in all those states.

This system also allows the taxpayer to minimize his or her property tax obligation by doing what he or she already has a powerful incentive to do -- deduct as much for depreciation as possible on the federal tax return. The more the taxpayer deducts, the less he or she will owe both the federal government in income taxes and the local government on property taxes.

Moreover, since not all taxpayers can depreciate property at the same rate on their federal tax returns, there would be differences among Nebraska taxpayers on the amount of property tax they owed on identical equipment.

For example, non-farm businesses can use faster depreciation schedules than farm businesses. As a result, after four years on a typical seven-year depreciation schedule, a farmer will have depreciated 57 percent of the value of a piece of equipment and will therefore be paying personal property tax on the remaining 43 percent. But on the same equipment, a non-farm business will have written off 69 percent of the value and will be paying property tax on only the remaining 31 percent. The farmer will therefore be paying about 38 percent more property tax on identical equipment.

This is plainly unfair. The 3-R committee plan transposes into Nebraska's property tax system this and other inconsistencies in the federal depreciation schedules, which are a patchwork quilt of special interest legislation.

The only way to avoid this problem is for Nebraska to develop its own depreciation schedules. But this would create a paperwork blizzard, with taxpayers having to calculate depreciation separately for the federal and state governments. It would also produce endless demands for the Legislature to provide special treatment for various interest groups.

The alternative approach considered by the 3-R Committee is to impose a surcharge on the amount annually deducted for personal property depreciation on the federal return. This is actually the current law in Nebraska, under LB 829 enacted as a temporary solution to the personal property tax crisis.

The surcharge has been challenged in court as an unconstitutional statewide property tax because the revenue is collected at the state level and not necessarily returned to the taxing jurisdictions in which the property is located. And because it is a flat surcharge, it continues the undesirable regressive nature of the property tax while raising only \$40 million (if the surcharge is 3 percent, the level the

committee considered).

The Depreciation Add-Back

We prefer a third approach: **Eliminate the personal property tax and instead, simply require Nebraska taxpayers to "add-back" to their Nebraska taxable income the amount they have deducted on their federal tax return for personal property depreciation.**

That means that the amount deducted on the federal return is taxed as regular income on the Nebraska return. Instead of charging a flat 3 percent surcharge, this income would be taxed at the taxpayer's marginal income tax rate.

This "depreciation add-back" approach has five distinct advantages:

- (1) It eliminates the cumbersome personal property tax system entirely.
- (2) It sharply reduces chances of a lawsuit successfully challenging the tax as a statewide property tax. We are simply altering the formula for calculating taxable income;
- (3) This is a progressive tax. Small businesses and farmers in lower tax brackets won't pay as much as those in higher brackets, both because they don't have as much depreciation to "add-back" and because they are in lower tax brackets. About 80 percent of Nebraska farmers are in the lowest two tax brackets.
- (4) It raises more money than the surcharge and nearly as much as the old personal property tax -- about \$75 million
- (5) It runs counter to the taxpayer's incentive to maximize depreciation -- the more you deduct on the federal return, the more you add back on your Nebraska return.

In effect, we are proposing that Nebraska treat personal property consistently in both its income and property tax systems. It doesn't exist on your property tax schedule, and you can't deduct its cost from your taxable income.

A Note on Taxing Livestock If the Personal Property Tax is Continued

If the personal property tax system is continued as called for by the 3-R Committee, we believe that farm and business property should be taxed consistently. Generally, only income-producing personal property that depreciates in value should be taxed. Two kinds of personal property owned by farms and businesses should **not** be taxed:

- (1) a good in the process of being produced, including materials to be incorporated into a finished product;
- (2) a finished good available for sale and not held for the use of the business.

Therefore, finished products for sale, raw materials to be made into products, and unfinished products should not be taxed.

How should these principles be applied to livestock? Since some livestock is raised only for meat and are therefore actually "goods" in the process of being produced, these should not be taxed, because they are a form of business inventory. The 3-R Committee report recognizes this, since these animals are not depreciated.

However, breeding stock and dairy animals are depreciable assets which produce products for sale. In this sense, they are like business equipment or machinery, and the 3-R Committee proposal would subject these animals to personal property tax on the basis of their net book value.

But breeding stock and dairy animals are really both income-producing depreciable property and meat producing animals, and this *dual role* makes them very different from farm and business equipment and machines. That difference is expressed economically in the relatively high salvage value of a cow or sow that has outlived its reproductive usefulness. It still has value as a meat animal, and is sold for slaughter. The salvage value of these animals is significant -- from one-third to two-thirds of their initial value as breeding stock.

To remain consistent with the principle that inventory should not be taxed, **only the portion of breeding stock's net book value that represents its value as an agent of reproduction should be subject to property tax.** The portion of the animal's value which is related to the meat it produces for human consumption should not be subject to a property tax.

Other Personal Property Tax Reforms

If the 3-R Committee approach is adopted, the Legislature should repeal the LB 775 exemption from personal property tax of main frame computers and jets. This exemption costs taxpayers (principally in Douglas and Lancaster counties) about \$5 million per year. If our "depreciation add-back" recommendation is adopted, there is no need to repeal this provision as the entire personal property tax system will be repealed.

Real Property Tax Reforms

Finally, to make the remaining real estate property tax system a little less regressive, we offer two other reform proposals:

(1) A "Circuit Breaker" on real property tax -- no one should have to pay more than a modest amount of their annual adjusted gross income for property tax on their owner-occupied home. We do not have a detailed proposal and cannot estimate the revenue impact of circuit breakers,

so we do not include them in our final revenue plan.

(2) A Renter Property Tax Credit for people with below median incomes. The revenue costs of this proposal is also unknown, so it is not included in our final revenue plan.

B. SURCHARGE ON UNEARNED INCOME FROM INTANGIBLES

Summary Recommendation: Impose a 1.5 percent surcharge on unearned income from intangible property, with a \$10,000 exemption.

Intangible property is that which does not possess a physical existence, according to Nebraska statute (77-105). Basically, it includes debt and equity instruments -- stocks, bonds, time deposits, mortgages, accounts receivable. Most states have stopped taxing intangible property -- seven still do, primarily in the southeast.

Nebraska imposed a property tax on the market value of intangible property until 1967. This tax was phased out when the income tax was adopted, primarily because it was difficult to administer. Since intangible property was self-reported and self-assessed, it was estimated that half of it was not being reported. In fairness to those who "underreported" intangible property, it is difficult to place a value on some intangibles, even for the owner of the property. What is stock in a closely held corporation really worth? Nonetheless, the tax on intangibles generated about \$10 million prior to its repeal.

The rationale for taxing intangibles is that they represent a growing share of the wealth of the highest income people. In fact, a recent study by the U.S. Treasury Department found that people with over \$1,000,000 in net worth held over half their wealth as intangibles, and less than one-quarter as real estate.

A New Look At Intangibles: A Surcharge on Income from Intangible Property

In tax policy, where there is a will there is a way. The Revenue Department staff has developed an alternative approach to intangibles. Instead of placing a value on the assets themselves and imposing a property tax on that value, simply place an additional income tax surcharge on the income from intangible property. This is the so-called "yield method." It might also be called an "unearned income tax," since dividends, interest, and capital gain are usually called "unearned income."

The yield method is used in Kansas, Michigan, and New Hampshire. Generally, these states tax the income from

interest and dividends (in Kansas, it's a local option tax). The main advantage of this approach is that the taxpayer has to report this income to IRS, separately from other income. This means IRS is the audit and enforcement agency.

This also allows the intangible tax to be imposed on capital gain on stock in closely held corporations, since this is also reported to IRS. However, income from pensions and tax-deferred savings plans should not be subject to the intangibles tax.

Is This Double Taxation?:

An income tax surcharge on the yield from intangibles effectively raises income taxes on people who hold intangible property, and some argue this is a form of double taxation. It is, but so is a real estate tax on income producing property (farmland and office buildings) when the income from those properties is taxed as well. We double tax all other forms of income-producing property, why not intangibles?

Should Capital Gain Income Be Subject to the Intangible Tax?

Capital gain occurs only sporadically, and frequently only after long term holding of the intangible property. Still, it is frequently the only form of yield realized on stock in closely held corporations. If an intangible tax is to apply to all intangible property on a yield basis, the capital gain should be taxed when it is received, in a lump sum. Note: the tax would not apply to capital gain in farmland or other real estate unless it were held in a corporation. This would partially offset some of the artificial tax advantages to incorporating farming operations.

Corporate Vs. Individual

Corporations receive over one-half of the income from intangible property (see table below) and would pay most of the intangible tax in Nebraska. By contrast, individuals now pay about 92 percent of the total Nebraska income tax.

Yield From	Corporations	Individuals
Dividends and Interest	\$2,209,000,000	\$1,982,000,000
Capital Gain on Intangibles	258,727,000	385,692,000
Total	\$2,467,727,000	\$2,367,692,000

Exemptions

Using the yield basis allows the intangible tax to be fashioned progressively by using a progressive rate and/or by allowing exemptions for a certain amount of income from intangibles.

Exemptions would make the tax less regressive and would shift even more of the burden onto corporations. An exemption for the first \$1,000 of unearned income from intangibles would reduce the tax base for individuals by over 20 percent, but would have a negligible effect on the corporate base. An exemption on the first \$10,000 would shrink the individual liability by 58 percent, the corporate liability by only 12 percent, and would leave 65 percent of the total intangible base subject to tax.

Intangible Tax Base If Exemption Level Is...

	None	\$1,000	3,000	5,000	10,000

	-- \$ billions --				
Corporate	2.5	2.4	2.4	2.4	2.2
Individual	2.4	1.9	1.6	1.3	1.0
Total	4.9	4.3	4.0	3.7	3.2

Rates and Revenue

If a one percent surcharge was placed on the taxable yield from intangibles, the revenue would be as follows:

Exemption Level	Revenue (\$mil)	
	Rate = 1 %	Rate = 1.5 %
None	49	73.5
\$ 1,000	43	64.5
\$ 3,000	40	60.0
\$ 5,000	37	55.5
\$10,000	32	48.0

We do not have sufficient data to estimate the impact of a progressive rate structure.

Taxing Intellectual Property

All of the foregoing analysis is based on the work of the Revenue Department staff. The staff did not include in the intangible property tax base any intellectual property. The term "intellectual property" means different things to different people. Is a college degree "intellectual property? We don't think so. The concept of "property," at least so

far as it relates to taxation, should be limited to items which can be sold or alienated. You can't sell a college degree. It has no market value.

But there are clearly forms of intellectual property which do have a market value, and they are an increasingly important part of the economy. These include patents, copyrights, and other items which produce royalty or licensing income. Moreover, since there is a line item on the federal tax forms to report these sources of income, they can easily be included in a tax on yield from intangibles.

For 1990, royalty income received by Nebraska taxpayers totaled \$19,639,018. Although this would yield only \$294,585 in tax revenue under the proposed intangibles tax at the 1.5% rate, this figure is likely to grow in an increasingly technological society. It should be included in the base.

Recommendation Regarding Tax on Intangibles

A surcharge tax on income yield from intangible property should be adopted by Nebraska, including dividends, interest, royalty, and capital gain (on intangible property only), with an exemption of \$10,000 for each taxpayer. At one percent, this would produce \$32.2 million. At 1.5 percent, \$48.3 million. We recommend the 1.5 percent level.

C. INDIVIDUAL INCOME TAX

Summary Recommendation: Make the individual income tax more progressive by replacing the personal exemption with a credit, adding four brackets at higher rates for taxpayers above \$100,000 in income, and by repealing the LB 775 capital gains tax exemption.

Nebraska does not place an especially heavy burden on income tax. We rank 32nd among the states in per capita income tax collected, 34th in the percent of personal income paid as individual and corporate income tax, and 31st in overall "effort" to collect income tax (a measure of how much we collect relative to what we would collect if we taxed income at the average rate that all states do).

Progressivity

Nebraska's individual income tax became decidedly less progressive when it was "decoupled" from the federal system in 1987. Even after reforms passed in 1988-89 to improve progressivity by increasing standard deductions and personal exemptions, Nebraska's system is still far less progressive than it would have been if it had remained linked to the federal system. All taxpayers with incomes

below about 90,000 pay more now than they would have under a linked system, while all above that figure pay less -- as much as 23 percent less for those with incomes above \$500,000.

Compared to most of our neighbors, Nebraska's tax on high income persons is very modest. The marginal tax rate in Nebraska is now 6.92 percent. For many nearby states, it's higher: Iowa, 9.98%; Kansas, 8.75%; Minnesota, 8%; North Dakota, 12%. Colorado is pegged to the federal system, which is more progressive than Nebraska's. If Nebraska had remained coupled to the federal system, its highest income tax bracket today would be about 8.58 percent.

Proposals to Make the Income Tax More Progressive

1. Replace the Personal Exemption with \$55 Credit: Gov. Ben Nelson has suggested replacing the personal exemption for each person with a personal credit for each person -- an exemption is worth more to someone in the higher tax brackets and costs the state more, while a credit treats every person the same. Will increase revenue by \$15.3 million.

2. Make the Income Tax Rates Structure More Progressive: We recommend bold action to make the income tax more progressive and to raise revenue with which to reduce dependence on property taxes. Creating new tax brackets and higher rates for taxpayers with higher incomes would raise significant revenue from those who have gained most from the federal tax reform in 1986 and from Nebraska's decision to decouple from the federal system in 1987.

We recommend adopting four new tax brackets as follows:

----- Brackets -----		-- Marginal Tax Rates--	
	Married Filing		
Single	Jointly or Head	Proposed	Current
	of Household		
-----	-----	-----	-----
50-100,000	100-200,000	8.07	6.92
100-200,000	200-500,000	8.65	6.92
200-500,000	500-1,000,000	9.22	6.92
Over 500,000	Over 1,000,000	9.80	6.92

Based on analysis provided by the Nebraska Department of Revenue, we estimate that this graduated rate structure would yield \$29 million above current projections for 1992. It would do so without raising income taxes on about 98

percent of the taxpayers. The four new brackets for higher income people would affect less than two percent of the taxpayers. Ninety-eight percent of Nebraska taxpayers would pay no more taxes.

Moreover, only those with net taxable income over \$500,000 (less than one-tenth of one percent of the resident taxpayers) would be paying significantly more in state income taxes than they would have been paying if Nebraska had remained coupled with the federal system. And Nebraska's top marginal rate would still be lower than Iowa's.

3. Repeal LB 775 Capital Gain Exemption: Finally, we recommend eliminating the LB 775 exemption for capital gain received from the sale of stock acquired while in the employment of a Nebraska corporation. That would add \$5.4 million annually to revenue, based on current income tax brackets and rates. It would add more if the high-income tax brackets we propose above are added.

4. Depreciation Add-Back: Taxpayers who deduct depreciation for personal property on their federal tax return should be required to add back that deduction to their Nebraska taxable income. This will generate about \$75 million according to the Legislative Fiscal Analyst's office (see section above on Personal Property Tax).

Shifting to More Reliance on Income Tax

If these changes were made, Nebraska's income tax system would be considerably more progressive (though little more progressive than the federal system and less progressive than Iowa's). It would provide an additional \$124.7 million with which to reduce reliance on the more regressive sales and property taxes. But more than 98 percent of Nebraskans would see no income tax increase.

D. CORPORATE INCOME TAX

Summary Recommendation: Add a third bracket for corporations with taxable income above \$1,000,000, and restore the three-part formula for calculating corporate income.

This is perhaps the most progressive of all state taxes because corporate stock is disproportionately held by high-income persons. Moreover, it is a tax that is paid largely by non-Nebraskans, since they are major shareholders in the largest Nebraska corporations that pay the most taxes. If the tax is passed on to consumers of the company's products, most of the largest company's consumers are out-of-state as well.

However, Nebraska is not particularly aggressive at taxing corporations. The highest tax rate on corporate

income is 7.81 percent, about average for all states. And since 1980, real (adjusted for inflation) income tax receipts from corporations has actually fallen 7 percent. This is due partly to business tax credits enacted in 1987, the full impact of which has not yet been fully felt. Corporate income taxes will fall even more in the years ahead as a new "sales only" formula for calculating taxable corporate income is phased in.

Current System

There are only two tax brackets for corporate income in Nebraska. On the first \$50,000 of income, they pay 5.58 percent. On amounts above that, they pay 7.81 percent. These figures are established by formula. Both are multiples of a so-called "primary tax rate," which is 3.7 percent. The first bracket is 150.7% of 3.7; the second bracket is 211% of 3.7.

This makes the corporate income tax rate essentially flat -- The small group of very large corporations pay only a little higher share of their net income for Nebraska taxes. In fact, in 1988, only 196 out of 29,565 Nebraska corporations (0.6 percent) earned nearly three-fifths of all corporate income, and paid just three-fifths of all corporate income taxes. There is almost no progressivity to the corporate income tax in Nebraska.

Reform Proposals

1. Make Corporate Tax Rates More Progressive : This can be accomplished by adding a third tax bracket for corporations that earn over \$1,000,000 in taxable income. If the income above that amount were taxed at 8.93 percent (241% of 3.7, which means the third bracket tax rate would be higher by about half as much as the amount by which the rate on the second bracket exceeds the rate on the first), this would increase revenue by about \$6.8 million over 1991-92 projections, according to the Department of Revenue. Since these are largely publicly held companies with out-of-state sales, much of this tax would be borne by out-of state consumers and shareholders, especially institutional investors.

2. Restore the Three-Part Formula for Calculating Taxable Income: States have long grappled with the problem of how to tax income from corporations headquartered in their state but doing business in many states -- or nations. Should the tax be based on income earned, sales made, or property held in the state? In efforts to prevent corporations from exploiting different states' tax laws, many states adopted a uniform approach based on a formula that weighted each factor equally.

Corporations with headquarters in-state have lobbied against the three-part formula, favoring a formula that taxes only the portion of their income that is equivalent to the

portion of their sales that are in the state. For very large companies, only a small portion of sales are in the state, although their impact on state services and infrastructure may be much greater.

The three-part formula is sound and it is fair to all the states that use it. It should be restored. Revenue Department says the sales-only formula costs the state \$6-10 million annually. Restoring the three-part formula would increase state revenue then by about \$8 million. With the higher tax bracket recommended above for corporations with sales above \$1,000,000, this would be significantly higher (probably by about \$1 million higher).

3. Repeal LB 775. : These business tax incentives cost more than they are worth for the foreseeable future and shift the tax burden from large to small companies, from expanding to struggling, from new to existing, and from urban to rural companies. Over the next nine years, the estimated average annual revenue loss is \$19.3 million on approved and pending contracts alone, excluding any new applications for credits and exemptions.

Key issue: can existing contracts be voided? If they can, immediate revenue impact for 1991-92 is \$28.5 million. Our revenue analysis in the conclusion of this report does not assume that current contracts can be voided.

4. Place a surcharge on the yield from intangible property. : About half of the yield from intangible property is received by corporations (see section above on "Surcharge on Unearned Income from Intangibles).

5. Raising all corporate income tax rates by 15 percent: If these reforms are adopted, the state would generate at least \$14.8 million more from the corporate income tax (not counting the possibility of voiding existing LB 775 contracts), plus any revenue loss avoided because there would be no new LB 775 contracts.

With a third bracket in place, each one percent across-the-board increase in the corporate income tax yield an additional \$.87 million.

An increase of 15 percent would generate an additional \$13.1 million to be used to reduce property and sales tax rates. That would raise the top marginal corporate income tax rate for companies with over \$1,000,000 in taxable income to 10.27 percent, still lower than the top rate in Iowa of 12 percent (for all companies with over \$250,000 in income).

Impose an annual filing fee of \$150 on all corporations. This provision was part of LB 829, the temporary measure enacted in 1991 to compensate local governments for revenue lost from the personal property tax as a result of the court rulings. We propose to make it permanent. This would raise about \$6 million per year.

E. SALES TAX

Summary Recommendation: (1) Place a sales tax on (a) services, exempting health and education, (b) pesticides; repeal the motor vehicle trade-in exemption. (2) Place a transactions tax on real estate sales, with a life time exemption of \$100,000 for each natural person for each of two categories: (a) owner-occupied housing and (b) owner-operated farm and business property

The current sales tax base excludes most services (except many of those most commonly consumed by low and moderate income persons, such as basic public utility service, entertainment admissions, and cable TV). It also excludes food as well as energy used in agriculture and some used in manufacturing. The sales tax base totaled about \$12.1 billion in 1991-92, only about 55 percent of the potential total if services, energy, and other exempt items were added to the base.

Reform Options:

1. Tax food. This could boost revenue by \$95 million, but it is a very regressive tax on the most basic necessity. One option making it less regressive is to offer a reimbursable tax credit sufficient to cover the tax on food expenditures necessary to produce a minimum adequate diet. People could claim the credit when they file their income tax, or, if they know enough and remember to do so, they could claim the reimbursement separately. The elderly and the poor are most vulnerable in this approach.

Perhaps as important, a credit sharply reduces the amount of revenue that a sales tax on food would produce. According to the United States Department of Agriculture, a minimum adequate diet for a family of four costs \$4,440. It would require a credit of \$56 per person to refund the sales tax this family would pay (at the current 5 percent rate) for a minimum adequate diet. A credit of \$56 per person would reduce the revenue from \$95 million to just \$11 million. It's hardly worth the state's effort to collect a \$95 million tax that nets only \$11 million to the state treasury. (Note: At four percent, a credit covering the same expenditure would cost \$66 million and the net revenue would be \$29 million).

Moreover, a sales tax on food is bad policy leadership for a state that not only produces food, but depends on livestock products for 60 percent of its farm income. Livestock products are among the most elastic in the consumer's shopping list. A sales tax raising food prices will discourage consumption of livestock products more than of other products, setting a bad example for larger consumer states which do not now tax food. A sales tax on food is therefore both bad social policy and, in Nebraska's

case, bad economic policy.

For all the foregoing reasons, we recommend against a sales tax on food. If one is imposed, it should provide a credit sufficient to cover the cost of a minimum adequate diet.

2. Extend sales tax to pesticides (herbicides, insecticides, fungicides, and rodenticides). Pesticides are an ever-present contaminant in our environment and their use should be discouraged. It is appropriate to subject them to sales taxes, even though they are a wholesale rather than retail item (the tax could be an excise tax, which is a form of sales tax usually applied to items at wholesale). Taxing pesticides would increase the sales tax base by about \$160 million (\$6.4 million in revenue at the 4% rate) and encourage a shift to sustainable agriculture. We recommend in favor.

3. Extend the sales tax to services: In an economy becoming increasingly service oriented, it is stubbornly unrealistic to ignore the sales tax base represented by the service sector. To leave services out of the sales tax base is increasingly difficult to justify. Moreover, to do so distorts economic decisions: If you have to pay a sales tax on a water softener, but not on a water softener service, you rent rather than buy.

There should be some reasonable exemptions:

a. Health expenditures -- why tax misfortune? Exempting health care services reduces the base by \$2.8 billion. It might be reasonable to add-back to the base those health care expenditures for cosmetic surgery.

b. Education (tuition) -- Education is a public good, not a consumption item. Exempting it reduces the base by \$198 million.

c. Real Estate Rent. Renters of real property are buying use of a physical capital asset on which the renter ultimately pays property taxes. A little, but very little landlord "service" is provided.

Should we tax services consumed by businesses? Theorists say that businesses should pay no sales tax (on goods or services) because businesses vary greatly in the extent to which they can pass those taxes on to consumers -- farmers can't, for example, insurance companies can, -- and because the sales tax would represent a highly variable portion of the final products' cost. They also argue that the companies will hire people to provide the service directly rather than pay another company to provide it on a taxable basis.

On the other hand, so many services are consumed by both businesses and consumers, it's hard to tax one and not the other. We recommend extending the sales tax to businesses services.

If services were taxed, excluding health care, education, and real estate rents, the sales tax base would increase by

about \$5.5 billion, or more than 50 percent above the current base (generating about \$220 million at the proposed 4% sales tax rate).

4. Place a sales tax on energy consumed in agriculture and manufacturing: Energy consumed in agriculture and manufacturing (including processing, refining, and generation of electricity), and in hospitals has generally been exempt from sales taxes. LB 829 (in effect for fiscal year 1991-92 only) places the sales tax on all these except agriculture and any amount in excess of \$2,000,000 spent by a manufacturer on energy.

We believe that the sales tax base should be as broad as possible so that rates can be kept as low as possible. We also believe that the best use of a regressive tax like the sales tax is where some public benefit beyond the revenue can be achieved. In the case of energy, the benefit of a sales tax is that it encourages conservation. We also believe that agriculture and other businesses should be treated alike, and that the sales tax on energy should apply to both. Although this hits agriculture hard (about \$15.3 million at the 4% rate), agriculture is also the principal beneficiary of the 20% reduction in real estate taxes we propose.

We therefore recommend that energy consumed in agriculture, manufacturing, and hospitals, be subject to the sales tax, with no exemption for sales above \$2,000,000 and no exemption for agriculture. Such a tax would raise \$34.8 million at the 4% sales tax rate.

5. Adopt a transactions tax on the purchase price of real estate. Real estate sales are not now taxed. There is no comprehensive data on real estate sales, but stamp tax records kept by county officials indicate that in 1989, all real estate transactions in the state totaled \$2,572 million.

Theoretically, a sales tax on real estate sales is borne by the seller because, just like points on a mortgage, the tax lowers the amount of principal that a purchaser can afford to pay. This is true of homes and business property, but it is probably especially true of farmland which is fixed in supply and is therefore always priced to absorb all the net income a buyer can afford to pay.

Such a transactions tax should therefore not make it any more difficult for a first time buyer to purchase a home, a business, or farmland than it is now, relative to other buyers. The seller will always get the most he/she can from the buyer, net of taxes they have to pay.

In fact, a transaction tax on real estate could be structured to help disadvantaged buyers. For example, each buyer could be given a lifetime exemption on the purchase of \$100,000 worth of owner-occupied housing and owner-operated farm or business property.

That means that for the first \$100,000 you spend on farm or business property you operate, or on housing you live in (no matter how many purchases there are, as long as the total is within the \$100,000 in each category -- housing and

farm/business property), you pay no transactions tax. That would give first time purchasers or those whose purchases have not yet exceeded their lifetime exemption a small competitive advantage in the real estate market.

These exemptions should be available only to taxpayers who are natural persons (preventing the use of corporate entities as a means of artificially multiplying the number of exemptions).

We recommend placing a transaction tax on real estate purchases, exempting \$100,000 over the lifetime of each natural person for each category (residential and farm/business property).

Data indicate that if the of all sales below \$100,000 and the portion of all larger sales that was below \$100,000 were entirely exempt, this tax would generate \$6 million. In all likelihood, the lifetime exemption would have been exhausted on many of those sales, and the revenue much higher, perhaps \$15 million.

However, because of the uncertainty over the revenue forecast, we have not included this proposal in the final analysis of the revenue plan we propose for the state. When we are able to estimate the revenue impact of this recommendation, we will be able to determine how that revenue might be used to fund property tax reductions, circuit breakers, or renters' credits.

6. Sales Tax Credit: To make the sales tax more progressive on a broadened tax base, a sales tax credit should be extended to all citizens of Nebraska. This should be a refundable credit, meaning that people who have no income tax obligation against which to claim the credit can get a refund by submitting a form claiming it. The credit should be equal to \$25 per person. Revenue Cost: \$36.4 million.

7. Repeal motor vehicle trade-in exemption. The value of a vehicle traded-in on a new one is deducted from the sales price of the new one, lowering the sales tax on the new vehicle. It favors people who buy new cars and penalizes those who drive older models. And it is an unwarranted subsidy to new car dealers because it encourages you to sell your used car through them rather than directly. The estimated revenue is \$13.8 million at current sales tax rates, or 11 million at the recommended 4

percent rate.

This revenue would go to the Highway Trust Fund, however, not to the state's General Fund. We recommend it nonetheless, because some of the Highway Trust Fund is distributed to local governments for roads and bridges, reducing pressure on the property tax. We recommend repealing the motor vehicle trade-in exemption.

8. Reduce the local sales tax option from 1.5% to 1%. If the policies we recommend to broaden the sales tax base are adopted, communities that exercise their option to impose a local sales tax would experience a windfall revenue increase and people who purchase taxable items in those communities would experience an unintended sales tax increase. We therefore recommend reducing the cap on local option sales taxes from 1.5 percent to 1.0 percent. Since our proposals increase the sales tax base by over 50 percent, communities who now impose the maximum 1.5 percent tax would raise the same revenue from a 1.0 percent tax.

9. Repeal retail collectors' fee. In the past, retailers have been paid a fee to collect and process the sales tax. This is in sharp contrast to the treatment of employers, who are paid nothing for withholding income tax, a process that involves as much or more of both paperwork and revenue. This collection fee is temporarily suspended under LB 829 and we recommend repealing it outright. The annual revenue impact is currently about \$7.1 million.

Sales Tax Summary

If these recommendations are adopted:

(1) The sales tax base (excluding the real estate transactions) would increase by about \$6.5 billion. That would raise the base to nearly \$18.6 billion.

(2) The sales tax collected on the first \$625 in expenditures by each person (\$2,500 for a family of four) would be offset by a sales tax credit of \$25 per person.

(3) The sales tax rate would be **lowered** to 4%.

(4) The net effect of this combination of policies would be to raise sales tax revenue from the \$582.3 million projected for 1991-92 to \$693.2 million.

IV. SUMMARY TABLE OF REVENUE SOURCES

<u>Revenue Source and Proposed Change</u>	<u>1991-92 Forecast¹</u>	<u>Change</u> (millions \$)	<u>Revised Revenue</u>
INCOME TAXES			
Individual Income Tax	\$652.4	124.7	\$777.1
Replace pers. exemption with credit		15.3	
Add high-income tax brackets at rates graduated from 8.07% up to 9.8%		29.0	
Eliminate capital gain exemption		5.4	
Add-back personal property depreciation		75.0	
Corporate Income Tax	72.0	33.9	105.9
Add third bracket		6.8	
Restore unitary formula		8.0	
Increase all rates by 15 percent		13.1	
Corporate filing fee		6.0	
Surcharge on Income from Intangibles	0.0	48.3	48.3
SALES TAXES	582.3	110.9	693.2
Lower rate from 5% to 4%		(121.0)	
Provide \$25/person credit		(36.4)	
Tax most services		220.0	
Tax pesticides		6.4	
Tax energy sales in agriculture, manufacturing, hospitals		34.8	
Repeal retail collectors' fee		7.1	
PROPERTY TAXES	1,217.6	(323.1)	894.5
Exempt all personal property.		(97.0)	
Reduce the avg mill levy on motor vehicles and real estate from .02309 to .01856 (20% decrease).			
Effect on motor vehicles --		(21.0)	
Effect on real estate --		(205.1)	
MISCELLANEOUS TAXES			
10% increase in alcohol/tobacco taxes	130.0	5.3	135.3
TOTAL	\$2,654.3		\$2,654.3

¹ Base year is 1991-92, adjusted to reflect conditions prior to court cases (i.e., with personal property taxes but without LB 829). Property tax figures include actual revenue in 1991 on taxes levied in 1990.