

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 895

FINAL READING

Introduced by Janssen, 15; Adams, 24; Burling, 33; Cornett, 45; Dierks, 40; Gay, 14; Langemeier, 23; Pahls, 31; Preister, 5; White, 8; at the request of the Governor.

Read first time January 11, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 18-2720 and 77-27,196.01, Reissue Revised Statutes of
3 Nebraska, sections 77-5701, 77-5703, 77-5708, 77-5712,
4 77-5714, 77-5723, 77-5726, 77-5727, and 77-5731, Revised
5 Statutes Cumulative Supplement, 2006, and sections
6 77-27,187.01, 77-27,187.02, 77-27,188, 77-5715, and
7 77-5725, Revised Statutes Supplement, 2007; to eliminate
8 certain loan servicing requirements under the Local
9 Option Municipal Economic Development Act; to change
10 provisions of certain tax incentive laws; to define
11 and redefine terms; to provide a fee; to provide for

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1 applicability; to harmonize provisions; to repeal the

2 original sections; and to declare an emergency.

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

1 Section 1. Section 18-2720, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 18-2720 (1) If the economic development program involves
4 the establishment of a loan fund, the governing body of the
5 city shall designate an appropriate individual to assume primary
6 responsibility for loan servicing and shall provide such other
7 assistance or additional personnel as may be required. The
8 individual may be an employee of the city, or the city may
9 contract with an appropriate business or financial institution for
10 loan servicing functions. The governing body of the city shall be
11 provided with an account of the status of each loan outstanding,
12 program income, and current investments of unexpended funds on a
13 monthly basis. Program income shall mean payments of principal and
14 interest on loans made from the loan fund and the interest earned
15 on these funds.

16 (2) ~~The individual responsible for loan servicing shall~~
17 ~~establish a separate account in a financial institution for each~~
18 ~~loan made from the loan fund.~~ Records kept on such accounts and
19 reports made to the governing body of the city shall include, but
20 not be limited to, the following information: (a) The name of the
21 borrower; (b) the purpose of the loan; (c) the date the loan was
22 made; (d) the amount of the loan; (e) the basic terms of the loan,
23 including the interest rate, the maturity date, and the frequency
24 of payments; and (f) the payments made to date and the current
25 balance due.

1 (3) The individual responsible for loan servicing shall
2 monitor the status of each loan and, with the cooperation of the
3 governing body of the city and the primary lender or lenders, take
4 appropriate action when a loan becomes delinquent. The governing
5 body shall establish standards for the determination of loan
6 delinquency, when a loan shall be declared to be in default, and
7 what action shall be taken to deal with the default to protect
8 the interests of the qualifying business, third parties, and the
9 city. The governing body shall establish a process to provide for
10 consultation, agreement, and joint action between the city and
11 the primary lender or lenders in pursuing appropriate remedies
12 following the default of a qualifying business in order to collect
13 amounts owed under the loan.

14 Sec. 2. Section 77-27,187.01, Revised Statutes
15 Supplement, 2007, is amended to read:

16 77-27,187.01 For purposes of the Nebraska Advantage Rural
17 Development Act, unless the context otherwise requires:

18 (1) Any term has the same meaning as used in the Nebraska
19 Revenue Act of 1967;

20 (2) Equivalent employees means the number of employees
21 computed by dividing the total hours paid in a year to employees by
22 the product of forty times the number of weeks in a year;

23 (3) Livestock means all animals, including cattle,
24 horses, sheep, goats, hogs, chickens, turkeys, and other species
25 of game birds and animals raised and produced subject to permit

1 and regulation by the Game and Parks Commission or the Department
2 of Agriculture;

3 (4) Livestock modernization or expansion means the
4 construction, improvement, or acquisition of buildings, facilities,
5 or equipment for livestock housing, confinement, feeding,
6 production, and waste management. Livestock modernization or
7 expansion does not include any improvements made to correct a
8 violation of the Environmental Protection Act, the Integrated Solid
9 Waste Management Act, the Livestock Waste Management Act, a rule
10 or regulation adopted and promulgated pursuant to such acts, or
11 any order of the Department of Environmental Quality undertaken
12 within five years after a complaint issued from the Director of
13 Environmental Quality under section 81-1507;

14 (5) Livestock production means the active use,
15 management, and operation of real and personal property for the
16 commercial production of livestock, for the commercial breeding,
17 training, showing, or racing of horses, or for the use of horses
18 in a recreational or tourism enterprise. The activity will be
19 considered commercial if the gross income derived from an activity
20 for two or more of the taxable years in the period of seven
21 consecutive taxable years which ends with the taxable year exceeds
22 the deductions attributable to such activity or, if the operation
23 has been in existence for less than seven years, if the activity is
24 engaged in for the purpose of generating a profit;

25 (6) Qualified employee leasing company means a company

1 which places all employees of a client-lessee on its payroll and
2 leases such employees to the client-lessee on an ongoing basis
3 for a fee and, by written agreement between the employee leasing
4 company and a client-lessee, grants to the client-lessee input into
5 the hiring and firing of the employees leased to the client-lessee;

6 (7) Related taxpayers includes any corporations that are
7 part of a unitary business under the Nebraska Revenue Act of 1967
8 but are not part of the same corporate taxpayer, any business
9 entities that are not corporations but which would be a part of
10 the unitary business if they were corporations, and any business
11 entities if at least fifty percent of such entities are owned by
12 the same persons or related taxpayers and family members as defined
13 in the ownership attribution rules of the Internal Revenue Code of
14 1986, as amended;

15 (8) Taxpayer means a corporate taxpayer or other person
16 subject to either an income tax imposed by the Nebraska Revenue
17 Act of 1967 or a franchise tax under Chapter 77, article 38, or a
18 partnership, limited liability company, subchapter S corporation,
19 cooperative, including a cooperative exempt under section 521 of
20 the Internal Revenue Code of 1986, as amended, limited cooperative
21 association, or joint venture that is or would otherwise be a
22 member of the same unitary group if incorporated, which is,
23 or whose partners, members, or owners representing an ownership
24 interest of at least ninety percent of the control of such
25 entity are, subject to or exempt from such taxes, and any other

1 partnership, limited liability company, subchapter S corporation,
2 cooperative, including a cooperative exempt under section 521 of
3 the Internal Revenue Code of 1986, as amended, limited cooperative
4 association, or joint venture when the partners, members, or owners
5 representing an ownership interest of at least ninety percent of
6 the control of such entity are subject to or exempt from such
7 taxes; and

8 (9) Year means the taxable year of the taxpayer.

9 Sec. 3. Section 77-27,187.02, Revised Statutes
10 Supplement, 2007, is amended to read:

11 77-27,187.02 (1) To earn the incentives set forth in the
12 Nebraska Advantage Rural Development Act, the taxpayer shall file
13 an application for an agreement with the Tax Commissioner.

14 (2) The application shall contain:

15 (a) A written statement describing the full expected
16 employment or type of livestock production and the investment
17 amount for a qualified business, as described in section 77-27,189,
18 in this state;

19 (b) Sufficient documents, plans, and specifications as
20 required by the Tax Commissioner to support the plan and to define
21 a project; and

22 (c) An application fee of five hundred dollars. The fee
23 shall be remitted to the State Treasurer for credit to the Nebraska
24 Advantage Rural Development Fund, which fund is hereby created. Any
25 money in the fund available for investment shall be invested by the

1 state investment officer pursuant to the Nebraska Capital Expansion
2 Act and the Nebraska State Funds Investment Act. The application
3 and all supporting information shall be confidential except for the
4 name of the taxpayer, the location of the project, and the amounts
5 of increased employment or investment.

6 (3) (a) The Tax Commissioner shall approve the application
7 and authorize the total amount of credits expected to be earned as
8 a result of the project if he or she is satisfied that the plan in
9 the application defines a project that (i) meets the requirements
10 established in section 77-27,188 and such requirements will be
11 reached within the required time period and (ii) for projects other
12 than livestock modernization or expansion projects, is located in
13 an eligible county, city, or village. ~~or enterprise zone.~~

14 (b) The Tax Commissioner shall not approve further
15 applications once the expected credits from the approved projects
16 total two million five hundred thousand dollars in each of fiscal
17 years 2004-05 and 2005-06, ~~and~~ three million dollars in each of
18 fiscal year years 2006-07 through 2008-09, and four million dollars
19 in fiscal year 2009-10 and each fiscal year thereafter. Four
20 hundred dollars of the application fee shall be refunded to the
21 applicant if the application is not approved because the expected
22 credits from approved projects exceed such amounts.

23 (c) Applications for benefits shall be considered in the
24 order in which they are received.

25 (d) Applications shall be filed by November 1 and shall

1 be complete by December 1 of each calendar year. Any application
2 that is filed after November 1 or that is not complete on December
3 1 shall be considered to be filed during the following calendar
4 year.

5 (4) After approval, the taxpayer and the Tax Commissioner
6 shall enter into a written agreement. The taxpayer shall agree
7 to complete the project, and the Tax Commissioner, on behalf of
8 the State of Nebraska, shall designate the approved plans of the
9 taxpayer as a project and, in consideration of the taxpayer's
10 agreement, agree to allow the taxpayer to use the incentives
11 contained in the Nebraska Advantage Rural Development Act up to
12 the total amount that were authorized by the Tax Commissioner
13 at the time of approval. The application, and all supporting
14 documentation, to the extent approved, shall be considered a part
15 of the agreement. The agreement shall state:

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

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

20 (c) The documentation the taxpayer will need to supply
21 when claiming an incentive under the act;

22 (d) The date the application was filed; and

23 (e) The maximum amount of credits authorized.

24 Sec. 4. Section 77-27,188, Revised Statutes Supplement,
25 2007, is amended to read:

1 77-27,188 (1) A refundable credit against the taxes
2 imposed by the Nebraska Revenue Act of 1967 shall be allowed to any
3 taxpayer who has an approved application pursuant to the Nebraska
4 Advantage Rural Development Act, who is engaged in a qualifying
5 business as described in section 77-27,189, and who after January
6 1, 2006:

7 (a) (i) Increases employment by two new equivalent
8 employees and makes an increased investment of at least one hundred
9 twenty-five thousand dollars prior to the end of the first taxable
10 year after the year in which the application was submitted in
11 (A) any county in this state with a population of fewer than
12 fifteen thousand inhabitants, according to the most recent federal
13 decennial census, or in any designated enterprise zone pursuant to
14 42 U.S.C. 11501 or the Enterprise Zone Act; (B) any village in this
15 state, or (C) any area within the corporate limits of a city of
16 the metropolitan class consisting of one or more contiguous census
17 tracts, as determined by the most recent federal decennial census,
18 which contain a percentage of persons below the poverty line of
19 greater than thirty percent, and all census tracts contiguous to
20 such tract or tracts; or

21 (ii) Increases employment by five new equivalent
22 employees and makes an increased investment of at least two hundred
23 fifty thousand dollars prior to the end of the first taxable year
24 after the year in which the application was submitted in any county
25 in this state with a population of less than twenty-five thousand

1 inhabitants, according to the most recent federal decennial census,
2 or any city of the second class; and

3 (b) Pays a minimum qualifying wage of eight dollars and
4 twenty-five cents per hour to the new equivalent employees for
5 which tax credits are sought under the Nebraska Advantage Rural
6 Development Act. The Department of Revenue shall adjust the minimum
7 qualifying wages required for applications filed after January 1,
8 2004, and each January 1 thereafter, as follows: The current rural
9 Nebraska average weekly wage shall be divided by the rural Nebraska
10 average weekly wage for 2003; and the result shall be multiplied by
11 the eight dollars and twenty-five cents minimum qualifying wage for
12 2003 and rounded to the nearest one cent. The amount of increase
13 or decrease in the minimum qualifying wages for any year shall
14 be the cumulative change in the rural Nebraska average weekly
15 wage since 2003. For purposes of this subsection, rural Nebraska
16 average weekly wage means the most recent average weekly wage paid
17 by all employers in all counties with a population of less than
18 twenty-five thousand inhabitants as reported by October 1 by the
19 Department of Labor.

20 For purposes of this section, a teleworker working in
21 Nebraska from his or her residence for a taxpayer shall be
22 considered an employee of the taxpayer, and property of the
23 taxpayer provided to the teleworker working in Nebraska from his
24 or her residence shall be considered an investment. Teleworker
25 includes an individual working on a per-item basis and an

1 independent contractor working for the taxpayer so long as the
2 taxpayer withholds Nebraska income tax from wages or other payments
3 made to such teleworker. For purposes of calculating the number
4 of new equivalent employees when the teleworkers are paid on a
5 per-item basis or are independent contractors, the total wages or
6 payments made to all such new employees during the year shall be
7 divided by the qualifying wage as determined in subdivision (b) of
8 this subsection, with the result divided by two thousand eighty
9 hours.

10 (2) A refundable credit against the taxes imposed by the
11 Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who
12 (a) has an approved application pursuant to the Nebraska Advantage
13 Rural Development Act, (b) is engaged in livestock production, and
14 (c) after January 1, 2007, invests at least fifty thousand dollars
15 for livestock modernization or expansion.

16 (3) The amount of the credit allowed under subsection
17 (1) of this section shall be three thousand dollars for each new
18 equivalent employee and two thousand seven hundred fifty dollars
19 for each fifty thousand dollars of increased investment. The amount
20 of the credit allowed under subsection (2) of this section shall
21 be ten percent of the investment, not to exceed a credit of
22 thirty thousand dollars. For each application, a taxpayer engaged
23 in livestock production may qualify for a credit under either
24 subsection (1) or (2) of this section, but cannot qualify for more
25 than one credit per application.

1 (4) An employee of a qualified employee leasing company
2 shall be considered to be an employee of the client-lessee for
3 purposes of this section if the employee performs services for the
4 client-lessee. A qualified employee leasing company shall provide
5 the Department of Revenue access to the records of employees leased
6 to the client-lessee.

7 (5) The credit shall not exceed the amounts set out in
8 the application and approved by the Tax Commissioner.

9 (6) (a) If a taxpayer who receives tax credits creates
10 fewer jobs or less investment than required in the project
11 agreement, the taxpayer shall repay the tax credits as provided in
12 this subsection.

13 (b) If less than seventy-five percent of the required
14 jobs in the project agreement are created, one hundred percent
15 of the job creation tax credits shall be repaid. If seventy-five
16 percent or more of the required jobs in the project agreement are
17 created, no repayment of the job creation tax credits is necessary.

18 (c) If less than seventy-five percent of the required
19 investment in the project agreement is created, one hundred percent
20 of the investment tax credits shall be repaid. If seventy-five
21 percent or more of the required investment in the project
22 agreement is created, no repayment of the investment tax credits is
23 necessary.

24 (7) For taxpayers who submitted applications for benefits
25 under the Nebraska Advantage Rural Development Act before January

1 1, 2006, subsection (1) of this section, as such subsection existed
2 immediately prior to such date, shall continue to apply to such
3 taxpayers. The changes made by Laws 2005, LB 312, shall not
4 preclude a taxpayer from receiving the tax incentives earned prior
5 to January 1, 2006.

6 Sec. 5. Section 77-27,196.01, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-27,196.01 (1) The changes made in sections 77-27,188,
9 77-27,188.02, 77-27,190, 77-27,192, 77-27,193, and 77-27,194 by
10 Laws 1997, LB 886, shall become operative for all credits earned in
11 tax years beginning, or deemed to begin, on and after January 1,
12 1998. For all credits earned in tax years beginning, or deemed to
13 begin, prior to January 1, 1998, the provisions of the Employment
14 Expansion and Investment Incentive Act as they existed immediately
15 prior to such date shall apply.

16 (2) The changes made in sections 77-27,187.01 and
17 77-27,188 by Laws 1999, LB 539, shall become operative for all
18 credits earned in tax years beginning, or deemed to begin, on
19 and after January 1, 1999. For all credits earned in tax years
20 beginning, or deemed to begin, prior to January 1, 1999, the
21 provisions of the Employment Expansion and Investment Incentive Act
22 as they existed immediately prior to such date shall apply.

23 (3) The changes made in sections 77-27,188, 77-27,188.02,
24 and 77-27,192 by Laws 2001, LB 169, shall become operative for
25 all credits earned in tax years beginning, or deemed to begin, on

1 and after January 1, 2001. For all credits earned in tax years
2 beginning, or deemed to begin, prior to January 1, 2001, the
3 provisions of the Employment Expansion and Investment Incentive Act
4 as they existed immediately prior to such date shall apply.

5 (4) The changes made in sections 77-27,187.01 and
6 77-27,187.02 by this legislative bill become operative for
7 applications filed on and after the effective date of this act. The
8 changes made in section 77-27,188 by this legislative bill become
9 operative for applications filed on and after July 1, 2009.

10 Sec. 6. Section 77-5701, Revised Statutes Cumulative
11 Supplement, 2006, is amended to read:

12 77-5701 Sections 77-5701 to 77-5734 and sections 8, 13,
13 14, and 20 of this act shall be known and may be cited as the
14 Nebraska Advantage Act.

15 Sec. 7. Section 77-5703, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 77-5703 For purposes of the Nebraska Advantage Act, the
18 definitions found in sections 77-5704 to 77-5721 and sections 8,
19 13, and 14 of this act shall be used.

20 Sec. 8. County average weekly wage for any calendar year
21 means the most recent average weekly wage paid by all employers in
22 the county as reported by the Department of Labor by October 1 of
23 the year prior to application.

24 Sec. 9. Section 77-5708, Revised Statutes Cumulative
25 Supplement, 2006, is amended to read:

1 77-5708 Entitlement period, for a tier 1 or tier 3
 2 project, means the year during which the required increases in
 3 employment and investment were met or exceeded and each year
 4 thereafter until the end of the ninth year following the year of
 5 application or the sixth year after the year the required increases
 6 were met or exceeded, whichever is sooner. Entitlement period,
 7 for a tier 2, tier 4, or tier 5 project, means the year during
 8 which the required increases in employment and investment were met
 9 or exceeded and each year thereafter until the end of the sixth
 10 year after the year the required increases were met or exceeded.
 11 Entitlement period, for a tier 6 project, means the year during
 12 which the required increases in employment and investment were met
 13 or exceeded and each year thereafter until the end of the ninth
 14 year after the year the required increases were met or exceeded.

15 Sec. 10. Section 77-5712, Revised Statutes Cumulative
 16 Supplement, 2006, is amended to read:

17 77-5712 Nebraska average weekly wage for any calendar
 18 year means the most recent average weekly wage paid by all
 19 employers in all counties in Nebraska as reported by the ~~prie~~
 20 ~~October 1~~ by the Department of Labor by October 1 of the year prior
 21 to application.

22 Sec. 11. Section 77-5714, Revised Statutes Cumulative
 23 Supplement, 2006, is amended to read:

24 77-5714 (1) Number of new employees, for a tier 1, tier
 25 2, tier 3, or tier 4 project, means the number of equivalent

1 employees that are employed at the project during a year that are
2 in excess of the number of equivalent employees during the base
3 year, not to exceed the number of equivalent employees employed at
4 the project during a year who are not base-year employees and who
5 are paid wages at a rate equal to at least sixty percent of the
6 Nebraska average weekly wage for the year of application.

7 (2) Number of new employees, for a tier 6 project, means
8 the number of equivalent employees that are employed at the project
9 during a year that are in excess of the number of equivalent
10 employees during the base year, not to exceed the number of
11 equivalent employees employed at the project during a year who are
12 not base-year employees and who are paid at a rate equal to or
13 greater than the tier 6 weekly required compensation for the year
14 of application.

15 (3) Teleworkers working for wages or salaries in Nebraska
16 from their residences for a taxpayer on tasks interdependent with
17 the work performed at the project shall be considered to be
18 employed at the project.

19 Sec. 12. Section 77-5715, Revised Statutes Supplement,
20 2007, is amended to read:

21 77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5
22 project, qualified business means any business engaged in:

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

1 (b) The performance of data processing,
2 telecommunication, insurance, or financial services. For purposes
3 of this subdivision, financial services includes only financial
4 services provided by any financial institution subject to tax
5 under Chapter 77, article 38, or any person or entity licensed by
6 the Department of Banking and Finance or the federal Securities
7 and Exchange Commission and telecommunication services includes
8 community antenna television service, Internet access, satellite
9 ground station, data center, call center, or telemarketing;

10 (c) The assembly, fabrication, manufacture, or processing
11 of tangible personal property;

12 (d) The administrative management of the taxpayer's
13 activities, including headquarter facilities relating to such
14 activities or the administrative management of any of the
15 activities of any business entity or entities in which the taxpayer
16 or a group of its shareholders holds any direct or indirect
17 ownership interest of at least ten percent, including headquarter
18 facilities relating to such activities;

19 (e) The storage, warehousing, distribution,
20 transportation, or sale of tangible personal property;

21 (f) The sale of software development services, computer
22 systems design, product testing services, or guidance or
23 surveillance systems design services or the licensing of technology
24 if the taxpayer derives at least seventy-five percent of the sales
25 or revenue attributable to such activities relating to the project

1 from sales or licensing either to customers who are not related
2 persons and located outside the state or to the United States
3 Government; ~~or~~

4 (g) The research, development, and maintenance of an
5 Internet web portal. For purposes of this subdivision, Internet web
6 portal means an Internet site that allows users to access, search,
7 and navigate the Internet; or

8 ~~(g)~~ (h) Any combination of the activities listed in this
9 subsection.

10 (2) For a tier 1 project, qualified business means any
11 business engaged in:

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

15 (b) The assembly, fabrication, manufacture, or processing
16 of tangible personal property;

17 (c) The sale of software development services, computer
18 systems design, product testing services, or guidance or
19 surveillance systems design services or the licensing of technology
20 if the taxpayer derives at least seventy-five percent of the sales
21 or revenue attributable to such activities relating to the project
22 from sales or licensing either to customers who are not related
23 persons and are located outside the state or to the United States
24 Government; or

25 (d) Any combination of activities listed in this

1 subsection.

2 (3) For a tier 6 project, qualified business means any
3 business except a business excluded by subsection (4) of this
4 section.

5 ~~(3)~~ (4) Qualified business does not include any business
6 activity in which eighty percent or more of the total sales are
7 sales to the ultimate consumer of food prepared for immediate
8 consumption or are sales to the ultimate consumer of tangible
9 personal property which is not assembled, fabricated, manufactured,
10 or processed by the taxpayer or used by the purchaser in any of the
11 activities listed in subsection (1) or (2) of this section.

12 Sec. 13. Tier 6 weekly required compensation means two
13 hundred percent of the county average weekly wage for the county
14 in which the project is located or one hundred fifty percent of
15 the state average weekly wage, whichever is higher. If the project
16 is located in more than one county, the higher county average
17 weekly wage shall be used to determine the tier 6 weekly required
18 compensation.

19 Sec. 14. Wages means compensation.

20 Sec. 15. Section 77-5723, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 77-5723 (1) In order to utilize the incentives set
23 forth in the Nebraska Advantage Act, the taxpayer shall file
24 an application, on a form developed by the Tax Commissioner,
25 requesting an agreement with the Tax Commissioner.

1 (2) The application shall contain:

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

4 (b) Sufficient documents, plans, and specifications as
5 required by the Tax Commissioner to support the plan and to define
6 a project;

7 (c) If more than one location within this state is
8 involved, sufficient documentation to show that the employment and
9 investment at different locations are interdependent parts of the
10 plan. A headquarters shall be presumed to be interdependent with
11 each other location directly controlled by such headquarters. A
12 showing that the parts of the plan would be considered parts of
13 a unitary business for corporate income tax purposes shall not
14 be sufficient to show interdependence for the purposes of this
15 subdivision;

16 (d) A nonrefundable application fee of one thousand
17 dollars for a tier 1 project, two thousand five hundred dollars for
18 a tier 2, tier 3, or tier 5 project, ~~and~~ five thousand dollars for
19 a tier 4 project, and ten thousand dollars for a tier 6 project.
20 The fee shall be credited to the Nebraska Advantage Fund; and

21 (e) A timetable showing the expected sales tax refunds
22 and what year they are expected to be claimed. The timetable shall
23 include both direct refunds due to investment and credits taken as
24 sales tax refunds as accurately as possible.

25 The application and all supporting information shall be

1 confidential except for the name of the taxpayer, the location of
2 the project, the amounts of increased employment and investment,
3 and the information required to be reported by sections 77-5731 and
4 77-5734.

5 (3) An application must be complete to establish the date
6 of the application. An application shall be considered complete
7 once it contains the items listed in subsection (2) of this
8 section, regardless of the Tax Commissioner's additional needs
9 pertaining to information or clarification in order to approve or
10 not approve the application.

11 (4) Once satisfied that the plan in the application
12 defines a project consistent with the purposes stated in the
13 Nebraska Advantage Act in one or more qualified business activities
14 within this state, that the taxpayer and the plan will qualify for
15 benefits under the act, and that the required levels of employment
16 and investment for the project will be met prior to the end of the
17 fourth year after the year in which the application was submitted
18 for a tier 1, ~~or~~ tier 3, or tier 6 project or the end of the
19 sixth year after the year in which the application was submitted
20 for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall
21 approve the application.

22 (5) After approval, the taxpayer and the Tax Commissioner
23 shall enter into a written agreement. The taxpayer shall agree
24 to complete the project, and the Tax Commissioner, on behalf of
25 the State of Nebraska, shall designate the approved plan of the

1 taxpayer as a project and, in consideration of the taxpayer's
2 agreement, agree to allow the taxpayer to use the incentives
3 contained in the Nebraska Advantage Act. The application, and
4 all supporting documentation, to the extent approved, shall be
5 considered a part of the agreement. The agreement shall state:

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

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

10 (c) The documentation the taxpayer will need to supply
11 when claiming an incentive under the act;

12 (d) The date the application was filed; and

13 (e) A requirement that the company update the Department
14 of Revenue annually on any changes in plans or circumstances which
15 affect the timetable of sales tax refunds as set out in the
16 application. If the company fails to comply with this requirement,
17 the Tax Commissioner may defer any pending sales tax refunds until
18 the company does comply.

19 (6) The incentives contained in section 77-5725 shall be
20 in lieu of the tax credits allowed by the Nebraska Advantage Rural
21 Development Act for any project. In computing credits under the
22 act, any investment or employment which is eligible for benefits
23 or used in determining benefits under the Nebraska Advantage Act
24 shall be subtracted from the increases computed for determining
25 the credits under section 77-27,188. New investment or employment

1 at a project location that results in the meeting or maintenance
2 of the employment or investment requirements, the creation of
3 credits, or refunds of taxes under the Employment and Investment
4 Growth Act shall not be considered new investment or employment
5 for purposes of the Nebraska Advantage Act. The use of carryover
6 credits under the Employment and Investment Growth Act, the Invest
7 Nebraska Act, the Nebraska Advantage Rural Development Act, or the
8 Quality Jobs Act shall not preclude investment and employment from
9 being considered new investment or employment under the Nebraska
10 Advantage Act. The use of property tax exemptions at the project
11 under the Employment and Investment Growth Act shall not preclude
12 investment not eligible for the property tax exemption from being
13 considered new investment under the Nebraska Advantage Act.

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

24 Sec. 16. Section 77-5725, Revised Statutes Supplement,
25 2007, is amended to read:

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

3 (a) Tier 1, investment in qualified property of at least
4 one million dollars and the hiring of at least ten new employees.
5 There shall be no new project applications for benefits under
6 this tier filed on or after January 1, 2011, without further
7 authorization of the Legislature. All complete project applications
8 filed before January 1, 2011, shall be considered by the Tax
9 Commissioner and approved if the project and taxpayer qualify
10 for benefits. Agreements may be executed with regard to completed
11 project applications filed before January 1, 2011. All project
12 agreements pending, approved, or entered into before such date
13 shall continue in full force and effect;

14 (b) Tier 2, investment in qualified property of at least
15 three million dollars and the hiring of at least thirty new
16 employees;

17 (c) Tier 3, the hiring of at least thirty new employees.
18 There shall be no new project applications for benefits under
19 this tier filed on or after January 1, 2011, without further
20 authorization of the Legislature. All complete project applications
21 filed before January 1, 2011, shall be considered by the Tax
22 Commissioner and approved if the project and taxpayer qualify
23 for benefits. Agreements may be executed with regard to completed
24 project applications filed before January 1, 2011. All project
25 agreements pending, approved, or entered into before such date

1 shall continue in full force and effect;

2 (d) Tier 4, investment in qualified property of at least
3 ten million dollars and the hiring of at least one hundred new
4 employees; ~~and~~

5 (e) Tier 5, investment in qualified property of at least
6 thirty million dollars. Failure to maintain an average number of
7 equivalent employees as defined in section 77-5727 greater than or
8 equal to the number of equivalent employees in the base year shall
9 result in a partial recapture of benefits; ~~and-~~

10 (f) Tier 6, investment in qualified property of at least
11 ten million dollars and the hiring of at least seventy-five new
12 employees or the investment in qualified property of at least
13 one hundred million dollars and the hiring of at least fifty new
14 employees. Agreements may be executed with regard to completed
15 project applications filed before January 1, 2016. All project
16 agreements pending, approved, or entered into before such date
17 shall continue in full force and effect.

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

22 (a) A refund of all sales and use taxes for a tier 2,
23 tier 4, ~~or~~ tier 5, or tier 6 project or a refund of one-half of
24 all sales and use taxes for a tier 1 project paid under the Local
25 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections

1 13-319, 13-324, and 13-2813 from the date of the application
2 through the meeting of the required levels of employment and
3 investment for all purchases, including rentals, of:

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

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

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

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

17 (b) A refund of all sales and use taxes for a tier 2,
18 tier 4, ~~or tier 5,~~ or tier 6 project or a refund of one-half of
19 all sales and use taxes for a tier 1 project paid under the Local
20 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
21 13-319, 13-324, and 13-2813 on the types of purchases, including
22 rentals, listed in subdivision (a) of this subsection for such
23 taxes paid during each year of the entitlement period in which
24 the taxpayer is at or above the required levels of employment and
25 investment.

1 (3) Any taxpayer who qualifies for a tier 1, tier 2,
2 tier 3, or tier 4 project shall be entitled to a credit equal to
3 three percent times the average wage of new employees times the
4 number of new employees if the average wage of the new employees
5 equals at least sixty percent of the Nebraska average annual wage
6 for the year of application. The credit shall equal four percent
7 times the average wage of new employees times the number of new
8 employees if the average wage of the new employees equals at least
9 seventy-five percent of the Nebraska average annual wage for the
10 year of application. The credit shall equal five percent times the
11 average wage of new employees times the number of new employees
12 if the average wage of the new employees equals at least one
13 hundred percent of the Nebraska average annual wage for the year of
14 application. The credit shall equal six percent times the average
15 wage of new employees times the number of new employees if the
16 average wage of the new employees equals at least one hundred
17 twenty-five percent of the Nebraska average annual wage for the
18 year of application. For computation of such credit:

19 (a) Average annual wage means the total compensation paid
20 to employees during the year at the project who are not base-year
21 employees and who are paid wages equal to at least sixty percent
22 of the Nebraska average weekly wage for the year of application,
23 excluding any compensation in excess of one million dollars paid
24 to any one employee during the year, divided by the number of
25 equivalent employees making up such total compensation;

1 (b) Average wage of new employees means the average
2 annual wage paid to employees during the year at the project who
3 are not base-year employees and who are paid wages equal to at
4 least sixty percent of the Nebraska average weekly wage for the
5 year of application, excluding any compensation in excess of one
6 million dollars paid to any one employee during the year; and

7 (c) Nebraska average annual wage means the Nebraska
8 average weekly wage times fifty-two.

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

14 ~~(4)~~ (5) Any taxpayer who has met the required levels of
15 employment and investment for a tier 2 or tier 4 project shall
16 receive a credit equal to ten percent of the investment made in
17 qualified property at the project. Any taxpayer who has met the
18 required levels of investment and employment for a tier 1 project
19 shall receive a credit equal to three percent of the investment
20 made in qualified property at the project. Any taxpayer who has
21 met the required levels of investment and employment for a tier
22 6 project shall receive a credit equal to fifteen percent of the
23 investment made in qualified property at the project.

24 ~~(5)~~ (6) The credits prescribed in subsections ~~(3)~~ and
25 ~~(4)~~ (3), (4), and (5) of this section shall be allowable for

1 compensation paid and investments made during each year of the
2 entitlement period that the taxpayer is at or above the required
3 levels of employment and investment.

4 ~~(6)~~ (7) The credit prescribed in subsection ~~(4)~~ (5) of
5 this section shall also be allowable during the first year of
6 the entitlement period for investment in qualified property at the
7 project after the date of the application and before the required
8 levels of employment and investment were met.

9 ~~(7)(a)~~ (8)(a) A taxpayer who has met the required levels
10 of employment and investment for a tier 4 or tier 6 project shall
11 receive the incentive provided in this subsection. A taxpayer who
12 has a project for an Internet web portal and who has met the
13 required level of investment for a tier 5 project shall receive the
14 incentive provided in this subsection for property in subdivision
15 (8)(b)(ii) of this section. Such investment and hiring of new
16 employees shall be considered a required level of investment and
17 employment for this subsection and for the recapture of benefits
18 under this subsection only.

19 (b) The following property used in connection with such
20 project or projects and acquired by the taxpayer, whether by
21 lease or purchase, after the date the application was filed shall
22 constitute separate classes of personal property:

23 (i) Turbine-powered aircraft, including turboprop,
24 turbojet, and turbofan aircraft, except when any such aircraft is
25 used for fundraising for or for the transportation of an elected

1 official;

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

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

18 (iv) Personal property which is business equipment
19 located in a single project if the business equipment is involved
20 directly in the manufacture or processing of agricultural products;
21 and-

22 (v) For a tier 6 project, any other personal property
23 located at the project.

24 (c) Such property shall be eligible for exemption from
25 the tax on personal property from the first January 1 following the

1 date of acquisition for property in subdivision ~~(7)(b)(i)~~ (8)(b)(i)
2 of this section, or from the first January 1 following the end
3 of the year during which the required levels were exceeded for
4 property in subdivisions ~~(7)(b)(ii)~~, ~~(iii)~~, and ~~(iv)~~ (8)(b)(ii),
5 (iii), (iv), and (v) of this section, through the ninth December
6 31 after the first year any property included in subdivisions
7 ~~(7)(b)(ii)~~, ~~(iii)~~, and ~~(iv)~~ (8)(b)(ii), (iii), (iv), and (v) of
8 this section qualifies for the exemption. In order to receive the
9 property tax exemptions allowed by subdivisions ~~(7)(b)(i)~~, ~~(ii)~~,
10 ~~(iii)~~, and ~~(iv)~~ subdivision (8)(b) of this section, the taxpayer
11 shall annually file a claim for exemption with the Tax Commissioner
12 on or before May 1. The form and supporting schedules shall be
13 prescribed by the Tax Commissioner and shall list all property
14 for which exemption is being sought under this section. A separate
15 claim for exemption must be filed for each project and each county
16 in which property is claimed to be exempt. A copy of this form
17 must also be filed with the county assessor in each county in
18 which the applicant is requesting exemption. The Tax Commissioner
19 shall determine the eligibility of each item listed for exemption
20 and, on or before August 10, certify such to the taxpayer and to
21 the affected county assessor. In determining the eligibility of
22 items of personal property for exemption, the Tax Commissioner is
23 limited to the question of whether the property claimed as exempt
24 by the taxpayer falls within the classes of property described in
25 subdivision ~~(7)(b)~~ (8)(b) of this section. The determination of

1 whether a taxpayer is eligible to obtain exemption for personal
2 property based on meeting the required levels of investment and
3 employment is the responsibility of the Tax Commissioner.

4 ~~(8)~~ (9) The investment thresholds in this section for
5 a particular year of application shall be adjusted by the method
6 provided in this subsection. Beginning October 1, 2006, and each
7 October 1 thereafter, the Producer Price Index for all commodities,
8 published by the United States Department of Labor, Bureau of Labor
9 Statistics, for the most recent available period shall be divided
10 by the Producer Price Index for the first quarter of 2006 and
11 the result multiplied by the applicable investment threshold. The
12 investment thresholds shall be adjusted for cumulative inflation
13 since 2006. If the resulting amount is not a multiple of one
14 million dollars, the amount shall be rounded to the next lowest
15 one million dollars. The investment thresholds established by this
16 subsection apply for purposes of project qualifications for all
17 applications filed on or after January 1 of the following year
18 for all years of the project. Adjustments do not apply to projects
19 after the year of application.

20 Sec. 17. Section 77-5726, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 77-5726 (1)(a) The credits prescribed in section 77-5725
23 shall be established by filing the forms required by the Tax
24 Commissioner with the income tax return for the year. The credits
25 may be used and shall be applied in the order in which they

1 were first allowed. The credits may be used after any other
2 nonrefundable credits to reduce the taxpayer's income tax liability
3 imposed by sections 77-2714 to 77-27,135. Any decision on how part
4 of the credit is applied shall not limit how the remaining credit
5 could be applied under this section.

6 (b) The taxpayer may use the credit provided in
7 ~~subsection (3)~~ subsections (3) and (4) of section 77-5725 to
8 reduce the taxpayer's income tax withholding employer or payor
9 tax liability under section 77-2756 or 77-2757 to the extent such
10 liability is attributable to the number of new employees at the
11 project. To the extent of the credit used, such withholding shall
12 not constitute public funds or state tax revenue and shall not
13 constitute a trust fund or be owned by the state. The use by the
14 taxpayer of the credit shall not change the amount that otherwise
15 would be reported by the taxpayer to the employee under section
16 77-2754 as income tax withheld and shall not reduce the amount that
17 otherwise would be allowed by the state as a refundable credit
18 on an employee's income tax return as income tax withheld under
19 section 77-2755.

20 The amount of credits used against income tax withholding
21 shall not exceed the withholding attributable to new employees at
22 the project. If the amount of credit used by the taxpayer against
23 income tax withholding exceeds this amount, the excess withholding
24 shall be returned to the Department of Revenue in the manner
25 provided in section 77-2756, such excess amount returned shall be

1 considered unused, and the amount of unused credits may be used
2 as otherwise permitted in this section or shall carry over to the
3 extent authorized in subdivision (1)(d) of this section.

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

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

21 ~~(d)~~ (e) Credits may be carried over until fully utilized,
22 except that such credits may not be carried over more than nine
23 years after the year of application for a tier 1 or tier 3 project,
24 ~~or~~ fourteen years after the year of application for a tier 2
25 or tier 4 project, or more than one year past the end of the

1 entitlement period for a tier 6 project.

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

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

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

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

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

13 (f) Interest shall not be allowed on any sales and use
14 taxes refunded under the Nebraska Advantage Act.

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

24 (4) A determination that a taxpayer is not engaged in a
25 qualified business or has failed to meet or maintain the required

1 levels of employment or investment for incentives, exemptions, or
2 recapture may be protested to the Tax Commissioner within thirty
3 days after the written determination by the Department of Revenue.
4 The Tax Commissioner shall issue a written order resolving such
5 protests. The determination of the Tax Commissioner may be appealed
6 to the district court of Lancaster County within thirty days after
7 the issuance of the order.

8 Sec. 18. Section 77-5727, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 77-5727 (1)(a) If the taxpayer fails either to meet the
11 required levels of employment or investment for the applicable
12 project by the end of the fourth year after the end of the year
13 the application was submitted for a tier 1, ~~or tier 3~~, or tier
14 6 project or by the end of the sixth year after the end of the
15 year the application was submitted for a tier 2, tier 4, or tier
16 5 project or to utilize such project in a qualified business at
17 employment and investment levels at or above those required in the
18 agreement for the entire entitlement period, all or a portion of
19 the incentives set forth in the Nebraska Advantage Act shall be
20 recaptured or disallowed.

21 (b) In the case of a taxpayer who has failed to meet
22 the required levels of investment or employment within the required
23 time period, all reduction in the personal property tax because of
24 the act shall be recaptured.

25 (2) In the case of a taxpayer who has failed to maintain

1 the project at the required levels of employment or investment
2 for the entire entitlement period, any reduction in the personal
3 property tax, any refunds in tax allowed under subsection (2)
4 of section 77-5725, and any refunds or reduction in tax allowed
5 because of the use of a credit allowed under ~~subsection (7) of~~
6 section 77-5725 shall be partially recaptured from either the
7 taxpayer or the owner of the improvement to real estate and any
8 carryovers of credits shall be partially disallowed. One-seventh
9 of the refunds, one-seventh of the reduction in personal property
10 tax, and one-seventh of the credits used shall be recaptured and
11 one-seventh of the remaining carryovers and the last remaining year
12 of personal property tax exemption shall be disallowed for each
13 year the taxpayer did not maintain such project at or above the
14 required levels of employment or investment.

15 (3) In the case of a taxpayer qualified under tier 5 who
16 has failed to maintain the average number of equivalent employees
17 at the project at the end of the six years following the year the
18 taxpayer attained the required amount of investment, any refunds
19 in tax allowed under subdivision (2)(a) of section 77-5725 or
20 any reduction in the personal property tax under section 77-5725
21 shall be partially recaptured from the taxpayer. The amount of
22 recapture shall be the total amount of refunds and reductions in
23 tax allowed for all years times the reduction in the average number
24 of equivalent employees employed at the end of the entitlement
25 period from the number of equivalent employees employed in the

1 base year divided by the number of equivalent employees employed
2 in the base year. For purposes of this subsection, the average
3 number of equivalent employees shall be calculated at the end of
4 the entitlement period by adding the number of equivalent employees
5 in the year the taxpayer attains the required level of investment
6 and each of the next following six years and dividing the result by
7 seven.

8 (4) If the taxpayer receives any refunds or reduction
9 in tax to which the taxpayer was not entitled or which were in
10 excess of the amount to which the taxpayer was entitled, the refund
11 or reduction in tax shall be recaptured separate from any other
12 recapture otherwise required by this section. Any amount recaptured
13 under this subsection shall be excluded from the amounts subject to
14 recapture under other subsections of this section.

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

22 (6) Any personal property tax that would have been due
23 except for the exemption allowed under the Nebraska Advantage
24 Act, to the extent it becomes due under this section, shall be
25 considered delinquent and shall be immediately due and payable to

1 the county or counties in which the property was located when
2 exempted. All amounts received by a county under this section shall
3 be allocated to each taxing unit levying taxes on tangible personal
4 property in the county in the same proportion that the levy on
5 tangible personal property of such taxing unit bears to the total
6 levy of all of such taxing units.

7 (7) Notwithstanding any other limitations contained in
8 the laws of this state, collection of any taxes deemed to be
9 underpayments by this section shall be allowed for a period of
10 three years after the end of the entitlement period.

11 (8) Any amounts due under this section shall be
12 recaptured notwithstanding other allowable credits and shall not be
13 subsequently refunded under any provision of the Nebraska Advantage
14 Act unless the recapture was in error.

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

18 Sec. 19. Section 77-5731, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 77-5731 (1) The Tax Commissioner shall submit an annual
21 report to the Legislature no later than July 15 of each year.

22 (2) The report shall list (a) the agreements which have
23 been signed during the previous calendar year, (b) the agreements
24 which are still in effect, (c) the identity of each taxpayer who is
25 party to an agreement, and (d) the location of each project.

1 (3) The report shall also state, for taxpayers who are
2 parties to agreements, by industry group (a) the specific incentive
3 options applied for under the Nebraska Advantage Act, (b) the
4 refunds allowed on the investment, (c) the credits earned, (d) the
5 credits used to reduce the corporate income tax and the credits
6 used to reduce the individual income tax, (e) the credits used
7 to obtain sales and use tax refunds, (f) the credits used against
8 withholding liability, (g) the number of jobs created under the
9 act, (h) the total number of employees employed in the state on the
10 last day of the calendar quarter prior to the application date and
11 the total number of employees employed in the state on subsequent
12 reporting dates, (i) the expansion of capital investment, (j) the
13 estimated wage levels of jobs created under the act subsequent to
14 the application date, (k) the total number of qualified applicants,
15 (l) the projected future state revenue gains and losses, (m) the
16 sales tax refunds owed, (n) the credits outstanding under the act,
17 and (o) the value of personal property exempted by class in each
18 county under the act, (p) the value of property for which payments
19 equal to property taxes paid were allowed in each county, and (q)
20 the total amount of the payments.

21 (4) In estimating the projected future state revenue
22 gains and losses, the report shall detail the methodology utilized,
23 state the economic multipliers and industry multipliers used to
24 determine the amount of economic growth and positive tax revenue,
25 describe the analysis used to determine the percentage of new jobs

1 attributable to the Nebraska Advantage Act assumption, and identify
2 limitations that are inherent in the analysis method.

3 (5) The report shall provide an explanation of the audit
4 and review processes of the Department of Revenue in approving and
5 rejecting applications or the grant of incentives and in enforcing
6 incentive recapture. The report shall also specify the median
7 period of time between the date of application and the date the
8 agreement is executed for all agreements executed by December 31 of
9 the prior year.

10 (6) The report shall provide information on
11 project-specific total incentives used every two years for
12 each approved project. The report shall disclose (a) the identity
13 of the taxpayer, (b) the location of the project, and (c) the total
14 credits used and refunds approved during the immediately preceding
15 two years expressed as a single, aggregated total. The incentive
16 information required to be reported under this subsection shall not
17 be reported for the first year the taxpayer attains the required
18 employment and investment thresholds. The information on first-year
19 incentives used shall be combined with and reported as part of the
20 second year. Thereafter, the information on incentives used for
21 succeeding years shall be reported for each project every two years
22 containing information on two years of credits used and refunds
23 approved. The incentives used shall include incentives which have
24 been approved by the department, but not necessarily received,
25 during the previous two calendar years.

1 (7) The report shall include an executive summary which
2 shows aggregate information for all projects for which the
3 information on incentives used in subsection (6) of this section
4 is reported as follows: (a) The total incentives used by all
5 taxpayers for projects detailed in subsection (6) of this section
6 during the previous two years; (b) the number of projects; (c)
7 the total number of employees of these taxpayers employed in
8 the state on the last day of the calendar quarter prior to the
9 application date, the new jobs at the project for which credits
10 have been granted, and the total number of employees employed in
11 the state by these taxpayers on subsequent reporting dates; (d) the
12 average compensation paid employees in the state in the year of
13 application and for the new jobs at the project; and (e) the total
14 investment for which incentives were granted. The executive summary
15 shall summarize the number of states which grant investment tax
16 credits, job tax credits, sales and use tax refunds for qualified
17 investment, and personal property tax exemptions and the investment
18 and employment requirements under which they may be granted.

19 (8) No information shall be provided in the report that
20 is protected by state or federal confidentiality laws.

21 Sec. 20. The changes made in sections 77-5703, 77-5708,
22 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and
23 77-5731 by this legislative bill and sections 8, 13, and 14 of
24 this act apply to all applications filed on and after the effective
25 date of this act. For all applications filed prior to such date,

1 the provisions of the Nebraska Advantage Act as they existed
2 immediately prior to such date apply.

3 Sec. 21. Original sections 18-2720 and 77-27,196.01,
4 Reissue Revised Statutes of Nebraska, sections 77-5701, 77-5703,
5 77-5708, 77-5712, 77-5714, 77-5723, 77-5726, 77-5727, and 77-5731,
6 Revised Statutes Cumulative Supplement, 2006, and sections
7 77-27,187.01, 77-27,187.02, 77-27,188, 77-5715, and 77-5725,
8 Revised Statutes Supplement, 2007, are repealed.

9 Sec. 22. Since an emergency exists, this act takes effect
10 when passed and approved according to law.