

AMENDMENTS TO LB 918

Introduced by Revenue.

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 77-5707, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 77-5707 Compensation means the wages and other payments
6 subject to ~~withholding for~~ the federal income Medicare tax.
7 ~~purposes.~~

8 Sec. 2. Section 77-5715, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5
11 project, qualified business means any 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 performance of data processing,
16 telecommunication, insurance, or financial services. For purposes
17 of this subdivision, financial services includes only financial
18 services provided by any financial institution subject to tax
19 under Chapter 77, article 38, or any person or entity licensed by
20 the Department of Banking and Finance or the federal Securities
21 and Exchange Commission and telecommunication services includes
22 community antenna television service, Internet access, satellite
23 ground station, data center, call center, or telemarketing;

1 (c) The assembly, fabrication, manufacture, or processing
2 of tangible personal property;

3 (d) The administrative management of the taxpayer's
4 activities, including headquarter facilities relating to such
5 activities or the administrative management of any of the
6 activities of any business entity or entities in which the taxpayer
7 or a group of its shareholders holds any direct or indirect
8 ownership interest of at least ten percent, including headquarter
9 facilities relating to such activities;

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

12 (f) The sale of tangible personal property if the
13 taxpayer derives at least seventy-five percent or more of the
14 sales or revenue attributable to such activities relating to the
15 project from sales to consumers who are not related persons and are
16 located outside the state;

17 (g) 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 located outside the state or to the United States
24 Government, including sales of such services, systems, or products
25 delivered by providing the customer with software or access to
26 software over the Internet or by other electronic means, regardless
27 of whether the software or data accessed by customers is stored on

1 a computer owned by the applicant, the customer, or a third party
2 and regardless of whether the computer storing the software or data
3 is located at the project;

4 (h) 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;

8 (i) The research, development, and maintenance of a data
9 center. For purposes of this subdivision, data center means a group
10 of computers, supporting equipment, and other organized assembly
11 of hardware or software in one or more interrelated physical
12 locations that is designed to centralize the storage, management,
13 or dissemination of data and information; or

14 ~~(i)~~ (j) Any combination of the activities listed in this
15 subsection.

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

18 (a) The conducting of research, development, or testing
19 for scientific, agricultural, animal husbandry, food product, or
20 industrial purposes;

21 (b) The assembly, fabrication, manufacture, or processing
22 of tangible personal property;

23 (c) The sale of software development services, computer
24 systems design, product testing services, or guidance or
25 surveillance systems design services or the licensing of technology
26 if the taxpayer derives at least seventy-five percent of the sales
27 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 are located outside the state or to the United States
3 Government, including sales of such services, systems, or products
4 delivered by providing the customer with software or access to
5 software over the Internet or by other electronic means, regardless
6 of whether the software or data accessed by customers is stored on
7 a computer owned by the applicant, the customer, or a third party
8 and regardless of whether the computer storing the software or data
9 is located at the project; or

10 (d) Any combination of activities listed in this
11 subsection.

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

15 (4) Except for business activity described in subdivision
16 (1)(f) of this section, qualified business does not include any
17 business activity in which eighty percent or more of the total
18 sales are sales to the ultimate consumer of (a) food prepared
19 for immediate consumption or (b) tangible personal property which
20 is not assembled, fabricated, manufactured, or processed by the
21 taxpayer or used by the purchaser in any of the activities listed
22 in subsection (1) or (2) of this section.

23 Sec. 3. Section 77-5725, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 77-5725 (1) Applicants may qualify for benefits under the
26 Nebraska Advantage Act in one of six tiers:

27 (a) Tier 1, investment in qualified property of at least

1 one million dollars and the hiring of at least ten new employees.
2 There shall be no new project applications for benefits under this
3 tier filed after December 31, 2015, without further authorization
4 of the Legislature. All complete project applications filed on
5 or before December 31, 2015, shall be considered by the Tax
6 Commissioner and approved if the project and taxpayer qualify
7 for benefits. Agreements may be executed with regard to completed
8 project applications filed on or before December 31, 2015. All
9 project agreements pending, approved, or entered into before such
10 date shall continue in full force and effect;

11 (b) Tier 2, investment in qualified property of at least
12 three million dollars and the hiring of at least thirty new
13 employees;

14 (c) Tier 3, the hiring of at least thirty new employees.
15 There shall be no new project applications for benefits under this
16 tier filed after December 31, 2015, without further authorization
17 of the Legislature. All complete project applications filed on
18 or before December 31, 2015, shall be considered by the Tax
19 Commissioner and approved if the project and taxpayer qualify
20 for benefits. Agreements may be executed with regard to completed
21 project applications filed on or before December 31, 2015. All
22 project agreements pending, approved, or entered into before such
23 date shall continue in full force and effect;

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

27 (e) Tier 5, investment in qualified property of at least

1 thirty million dollars. Failure to maintain an average number of
2 equivalent employees as defined in section 77-5727 greater than or
3 equal to the number of equivalent employees in the base year shall
4 result in a partial recapture of benefits; and

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

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

17 (a) A refund of all sales and use taxes for a tier 2,
18 tier 4, tier 5, or tier 6 project or a refund of one-half of all
19 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 from the date of the application
22 through the meeting of the required levels of employment and
23 investment for all purchases, including rentals, of:

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

25 (ii) Property, excluding motor vehicles, based in this
26 state and used in both this state and another state in connection
27 with the project except when any such property is to be used for

1 fundraising for or for the transportation of an elected official;

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

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

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

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

1 year of application. The credit shall equal five percent times the
2 average wage of new employees times the number of new employees
3 if the average wage of the new employees equals at least one
4 hundred percent of the Nebraska average annual wage for the year of
5 application. The credit shall equal six percent times the average
6 wage of new employees times the number of new employees if the
7 average wage of the new employees equals at least one hundred
8 twenty-five percent of the Nebraska average annual wage for the
9 year of application. For computation of such credit:

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

17 (b) Average wage of new employees means the average
18 annual wage paid to employees during the year at the project who
19 are not base-year employees and who are paid wages equal to at
20 least sixty percent of the Nebraska average weekly wage for the
21 year of application, excluding any compensation in excess of one
22 million dollars paid to any one employee during the year; and

23 (c) Nebraska average annual wage means the Nebraska
24 average weekly wage times fifty-two.

25 (4) Any taxpayer who qualifies for a tier 6 project shall
26 be entitled to a credit equal to ten percent times the total
27 compensation paid to all employees, other than base-year employees,

1 excluding any compensation in excess of one million dollars paid to
2 any one employee during the year, employed at the project.

3 (5) Any taxpayer who has met the required levels of
4 employment and investment for a tier 2 or tier 4 project shall
5 receive a credit equal to ten percent of the investment made in
6 qualified property at the project. Any taxpayer who has met the
7 required levels of investment and employment for a tier 1 project
8 shall receive a credit equal to three percent of the investment
9 made in qualified property at the project. Any taxpayer who has
10 met the required levels of investment and employment for a tier
11 6 project shall receive a credit equal to fifteen percent of the
12 investment made in qualified property at the project.

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

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

23 (8)(a) A taxpayer who has met the required levels of
24 employment and investment for a tier 4 or tier 6 project shall
25 receive the incentive provided in this subsection. A taxpayer who
26 has a project for an Internet web portal or a data center and who
27 has met the required ~~level~~ levels of employment and investment for

1 a tier 2 project or the required level of investment for a tier 5
2 project shall receive the incentive provided in this subsection for
3 property in subdivision (8)(b)(ii) of this section. Such investment
4 and hiring of new employees shall be considered a required level of
5 investment and employment for this subsection and for the recapture
6 of benefits under this subsection only.

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

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

15 (ii) Computer systems, made up of equipment that is
16 interconnected in order to enable the acquisition, storage,
17 manipulation, management, movement, control, display, transmission,
18 or reception of data involving computer software and hardware, used
19 for business information processing which require environmental
20 controls of temperature and power and which are capable of
21 simultaneously supporting more than one transaction and more than
22 one user. A computer system includes peripheral components which
23 require environmental controls of temperature and power connected
24 to such computer systems. Peripheral components shall be limited to
25 additional memory units, tape drives, disk drives, power supplies,
26 cooling units, data switches, and communication controllers;

27 (iii) Depreciable personal property used for a

1 distribution facility, including, but not limited to, storage
2 racks, conveyor mechanisms, forklifts, and other property used to
3 store or move products;

4 (iv) Personal property which is business equipment
5 located in a single project if the business equipment is involved
6 directly in the manufacture or processing of agricultural products;
7 and

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

10 (c) Such property shall be eligible for exemption from
11 the tax on personal property from the first January 1 following
12 the date of acquisition for property in subdivision (8)(b)(i)
13 of this section, or from the first January 1 following the end
14 of the year during which the required levels were exceeded for
15 property in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this
16 section, through the ninth December 31 after the first year any
17 property included in subdivisions (8)(b)(ii), (iii), (iv), and (v)
18 of this section qualifies for the exemption. In order to receive
19 the property tax exemptions allowed by subdivision (8)(b) of this
20 section, the taxpayer shall annually file a claim for exemption
21 with the Tax Commissioner on or before May 1. The form and
22 supporting schedules shall be prescribed by the Tax Commissioner
23 and shall list all property for which exemption is being sought
24 under this section. A separate claim for exemption must be filed
25 for each project and each county in which property is claimed
26 to be exempt. A copy of this form must also be filed with the
27 county assessor in each county in which the applicant is requesting

1 exemption. The Tax Commissioner shall determine the eligibility
2 of each item listed for exemption and, on or before August 1,
3 certify such to the taxpayer and to the affected county assessor.
4 In determining the eligibility of items of personal property for
5 exemption, the Tax Commissioner is limited to the question of
6 whether the property claimed as exempt by the taxpayer falls
7 within the classes of property described in subdivision (8)(b) of
8 this section. The determination of whether a taxpayer is eligible
9 to obtain exemption for personal property based on meeting the
10 required levels of investment and employment is the responsibility
11 of the Tax Commissioner.

12 (9) (a) The investment thresholds in this section for a
13 particular year of application shall be adjusted by the method
14 provided in this subsection.

15 (b) For tier 1, tier 2, tier 4, and tier 5, beginning
16 October 1, 2006, and each October 1 thereafter, the average
17 Producer Price Index for all commodities, published by the United
18 States Department of Labor, Bureau of Labor Statistics, for the
19 most recent twelve available periods shall be divided by the
20 Producer Price Index for the first quarter of 2006 and the result
21 multiplied by the applicable investment threshold. The investment
22 thresholds shall be adjusted for cumulative inflation since 2006.

23 (c) For tier 6, beginning October 1, 2008, and each
24 October 1 thereafter, the average Producer Price Index for all
25 commodities, published by the United States Department of Labor,
26 Bureau of Labor Statistics, for the most recent twelve available
27 periods shall be divided by the Producer Price Index for the

1 first quarter of 2008 and the result multiplied by the applicable
2 investment threshold. The investment thresholds shall be adjusted
3 for cumulative inflation since 2008.

4 (d) If the resulting amount is not a multiple of one
5 million dollars, the amount shall be rounded to the next lowest one
6 million dollars.

7 (e) The investment thresholds established by this
8 subsection apply for purposes of project qualifications for all
9 applications filed on or after January 1 of the following year for
10 all years of the project. Adjustments do not apply to projects
11 after the year of application.

12 Sec. 4. Section 77-5735, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-5735 The changes made in sections 77-5703, 77-5708,
15 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and
16 77-5731 by Laws 2008, LB 895, and sections 77-5707.01, 77-5719.01,
17 and 77-5719.02 apply to all applications filed on and after
18 April 18, 2008. For all applications filed prior to such date,
19 the provisions of the Nebraska Advantage Act as they existed
20 immediately prior to such date apply. The changes made in sections
21 77-5707, 77-5715, and 77-5725 by this legislative bill apply to all
22 applications filed on or after the effective date of this act. For
23 all applications filed prior to such date, the provisions of the
24 Nebraska Advantage Act as they existed immediately prior to such
25 date apply.

26 Sec. 5. Original sections 77-5707, 77-5715, 77-5725, and
27 77-5735, Reissue Revised Statutes of Nebraska, are repealed.