

AMENDMENTS TO LB935

Introduced by Executive Board.

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

3           Section 1. (1) Notwithstanding sections 77-2711 and 77-27,119, the  
4 Tax Commissioner may permit the Director of Economic Development or his  
5 or her designee to inspect identification information derived from tax  
6 returns of taxpayers participating in economic development tax incentive  
7 programs. Return information shall be inspected only on the premises of  
8 the Department of Revenue. Such inspection shall be only for the purpose  
9 of identifying taxpayers participating in programs under audit pursuant  
10 to section 50-1209. The information inspected shall be limited to the  
11 names, addresses, and identification numbers of participating taxpayers.

12           (2) Any tax return information received by the Director of Economic  
13 Development or his or her designee pursuant to this section shall be  
14 considered confidential, and any person who discloses such information  
15 other than as specifically allowed by this section or other laws of this  
16 state shall be guilty of a Class I misdemeanor.

17           Sec. 2. Section 77-5701, Revised Statutes Cumulative Supplement,  
18 2016, is amended to read:

19           77-5701 Sections 77-5701 to 77-5735 and sections 4 and 5 of this act  
20 shall be known and may be cited as the Nebraska Advantage Act.

21           Sec. 3. Section 77-5723, Revised Statutes Cumulative Supplement,  
22 2016, is amended to read:

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

27           (2) The application shall contain:

1 (a) A written statement describing the plan of employment and  
2 investment for a qualified business in this state. For applications filed  
3 on and after the effective date of this act, the written statement shall  
4 include the following information with respect to the applicant's  
5 business operations in Nebraska: ;

6 (i) All federal employer identification numbers associated with the  
7 taxpayer and with the members of the taxpayer's unitary group, if any;

8 (ii) An identification of which federal employer identification  
9 numbers will include new employees;

10 (iii) All unemployment insurance identification numbers associated  
11 with the taxpayer and with the members of the taxpayer's unitary group,  
12 if any; and

13 (iv) An identification of which unemployment insurance  
14 identification numbers will include new employees;

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

17 (c) If more than one location within this state is involved,  
18 sufficient documentation to show that the employment and investment at  
19 different locations are interdependent parts of the plan. A headquarters  
20 shall be presumed to be interdependent with each other location directly  
21 controlled by such headquarters. A showing that the parts of the plan  
22 would be considered parts of a unitary business for corporate income tax  
23 purposes shall not be sufficient to show interdependence for the purposes  
24 of this subdivision;

25 (d) A nonrefundable application fee of one thousand dollars for a  
26 tier 1 project, two thousand five hundred dollars for a tier 2, tier 3,  
27 or tier 5 project, five thousand dollars for a tier 4 project, and ten  
28 thousand dollars for a tier 6 project. The fee shall be credited to the  
29 Nebraska Incentives Fund; and

30 (e) A timetable showing the expected sales tax refunds and what year  
31 they are expected to be claimed. The timetable shall include both direct

1 refunds due to investment and credits taken as sales tax refunds as  
2 accurately as possible.

3 The application and all supporting information shall be confidential  
4 except for the name of the taxpayer, the location of the project, the  
5 amounts of increased employment and investment, and the information  
6 required to be reported by sections 77-5731 and 77-5734.

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

12 (4) Once satisfied that the plan in the application defines a  
13 project consistent with the purposes stated in the Nebraska Advantage Act  
14 in one or more qualified business activities within this state, that the  
15 taxpayer and the plan will qualify for benefits under the act, and that  
16 the required levels of employment and investment for the project will be  
17 met prior to the end of the fourth year after the year in which the  
18 application was submitted for a tier 1, tier 3, or tier 6 project or the  
19 end of the sixth year after the year in which the application was  
20 submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner  
21 shall approve the application. For a tier 5 project that is sequential to  
22 a tier 2 large data center project, the required level of investment  
23 shall be met prior to the end of the fourth year after the expiration of  
24 the tier 2 large data center project entitlement period relating to  
25 direct sales tax refunds.

26 (5) The Tax Commissioner shall make his or her determination to  
27 approve or not approve an application within one hundred eighty days  
28 after the date of the application. If the Tax Commissioner requests, by  
29 mail or by electronic means, additional information or clarification from  
30 the taxpayer in order to make his or her determination, such one-hundred-  
31 eighty-day period shall be tolled from the time the Tax Commissioner

1 makes the request to the time he or she receives the requested  
2 information or clarification from the taxpayer. The taxpayer and the Tax  
3 Commissioner may also agree to extend the one-hundred-eighty-day period.  
4 If the Tax Commissioner fails to make his or her determination within the  
5 prescribed one-hundred-eighty-day period, the application shall be deemed  
6 approved.

7 (6) Within one hundred eighty days after approval of the  
8 application, the Tax Commissioner shall prepare and mail a written  
9 agreement to the taxpayer for the taxpayer's signature. The taxpayer and  
10 the Tax Commissioner shall enter into a written agreement. The taxpayer  
11 shall agree to complete the project, and the Tax Commissioner, on behalf  
12 of the State of Nebraska, shall designate the approved plan of the  
13 taxpayer as a project and, in consideration of the taxpayer's agreement,  
14 agree to allow the taxpayer to use the incentives contained in the  
15 Nebraska Advantage Act. The application, and all supporting  
16 documentation, to the extent approved, shall be considered a part of the  
17 agreement. The agreement shall state:

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

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

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

24 (d) The date the application was filed;~~and~~

25 (e) A requirement that the company update the Department of Revenue  
26 annually on any changes in plans or circumstances which affect the  
27 timetable of sales tax refunds as set out in the application. If the  
28 company fails to comply with this requirement, the Tax Commissioner may  
29 defer any pending sales tax refunds until the company does comply; and -

30 (f) For agreements entered into on or after the effective date of  
31 this act, a requirement that the company create and maintain a separate

1 unemployment insurance account with the Department of Labor for each  
2 location that will have new employees. Such unemployment insurance  
3 account shall:

4 (i) Be maintained for the duration of the taxpayer's participation  
5 in the Nebraska Advantage Act;

6 (ii) Be used only for the new employees who work at the relevant  
7 location and earn the rate of pay necessary to be included in the  
8 calculation of credits under the Nebraska Advantage Act; and

9 (iii) Be used to report the wages paid, hours paid, and job titles  
10 for the new employees who work at the relevant location and earn the rate  
11 of pay necessary to be included in the calculation of credits under the  
12 act.

13 (7) The incentives contained in section 77-5725 shall be in lieu of  
14 the tax credits allowed by the Nebraska Advantage Rural Development Act  
15 for any project. In computing credits under the act, any investment or  
16 employment which is eligible for benefits or used in determining benefits  
17 under the Nebraska Advantage Act shall be subtracted from the increases  
18 computed for determining the credits under section 77-27,188. New  
19 investment or employment at a project location that results in the  
20 meeting or maintenance of the employment or investment requirements, the  
21 creation of credits, or refunds of taxes under the Employment and  
22 Investment Growth Act shall not be considered new investment or  
23 employment for purposes of the Nebraska Advantage Act. The use of  
24 carryover credits under the Employment and Investment Growth Act, the  
25 Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the  
26 Quality Jobs Act shall not preclude investment and employment from being  
27 considered new investment or employment under the Nebraska Advantage Act.  
28 The use of property tax exemptions at the project under the Employment  
29 and Investment Growth Act shall not preclude investment not eligible for  
30 the property tax exemption from being considered new investment under the  
31 Nebraska Advantage Act.

1 (8) A taxpayer and the Tax Commissioner may enter into agreements  
2 for more than one project and may include more than one project in a  
3 single agreement. The projects may be either sequential or concurrent. A  
4 project may involve the same location as another project. No new  
5 employment or new investment shall be included in more than one project  
6 for either the meeting of the employment or investment requirements or  
7 the creation of credits. When projects overlap and the plans do not  
8 clearly specify, then the taxpayer shall specify in which project the  
9 employment or investment belongs.

10 (9) The taxpayer may request that an agreement be modified if the  
11 modification is consistent with the purposes of the act and does not  
12 require a change in the description of the project. An agreement may not  
13 be modified to a tier that would grant a higher level of benefits to the  
14 taxpayer or to a tier 1 project. Once satisfied that the modification to  
15 the agreement is consistent with the purposes stated in the act, the Tax  
16 Commissioner and taxpayer may amend the agreement. For a tier 6 project,  
17 the taxpayer must agree to limit the project to qualified activities  
18 allowable under tier 2 and tier 4.

19 Sec. 4. (1) To facilitate accurate and thorough tax incentive  
20 performance audits under section 50-1209, each taxpayer that has an  
21 active agreement with the Department of Revenue to receive incentives  
22 under the Nebraska Advantage Act shall:

23 (a) Beginning in 2019, submit a report to the Department of Revenue  
24 by October 31 of each year. The report shall include the following  
25 information with respect to the taxpayer's business operations in  
26 Nebraska:

27 (i) All federal employer identification numbers associated with the  
28 taxpayer and with the members of the taxpayer's unitary group, if any;

29 (ii) An identification of which federal employer identification  
30 numbers include new employees;

31 (iii) All unemployment insurance identification numbers associated

1 with the taxpayer and with the members of the taxpayer's unitary group,  
2 if any;

3 (iv) An identification of which unemployment insurance  
4 identification numbers include new employees;

5 (v) The amount of investment that was approved for credits in the  
6 previous taxable year, identified by asset class as described in Internal  
7 Revenue Service Publication 946, Tables B-1 and B-2;

8 (vi) The number of employees for each quarter in the previous  
9 calendar year who were offered employer-provided medical, vision, dental,  
10 and retirement benefits; and

11 (vii) The number of employees for each quarter in the previous  
12 calendar year who received employer-provided medical, vision, dental, and  
13 retirement benefits; and

14 (b) Create and maintain a separate unemployment insurance account  
15 with the Department of Labor for each location that has new employees.  
16 Such unemployment insurance account shall:

17 (i) Be maintained for the duration of the taxpayer's participation  
18 in the Nebraska Advantage Act;

19 (ii) Be used only for the new employees who work at the relevant  
20 location and earn the rate of pay necessary to be included in the  
21 calculation of credits under the Nebraska Advantage Act; and

22 (iii) Be used to report the wages paid, hours paid, and job titles  
23 for the new employees who work at the relevant location and earn the rate  
24 of pay necessary to be included in the calculation of credits under the  
25 act.

26 (2) Taxpayers shall continue to submit the report required in  
27 subdivision (1)(a) of this section until three years have passed after  
28 the end of the last taxable year in which credits may be claimed under  
29 the Nebraska Advantage Act, except that such reporting requirement shall  
30 no longer apply if:

31 (a) The taxpayer withdraws from participation in the Nebraska

1 Advantage Act; or

2 (b) The Department of Revenue terminates the taxpayer's  
3 participation in the Nebraska Advantage Act.

4 Sec. 5. To facilitate accurate and thorough tax incentive  
5 performance audits under section 50-1209, the Department of Revenue shall  
6 retain all relevant administrative records and data relating to the  
7 Nebraska Advantage Act for at least twenty years. For purposes of this  
8 section, administrative records and data include, but are not limited to:

9 (1) Tax returns;

10 (2) Administrative data bases and spreadsheets;

11 (3) Audits; and

12 (4) Contracts and agreements.

13 Sec. 6. Original sections 77-5701 and 77-5723, Revised Statutes  
14 Cumulative Supplement, 2016, are repealed.