

E AND R AMENDMENTS TO LB 935

Introduced by Wishart, 27, Chairman Enrollment and Review

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

3 Section 1. (1) Notwithstanding sections 77-2711 and 77-27,119, the
4 Tax Commissioner shall 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.

30 (7) The incentives contained in section 77-5725 shall be in lieu of
31 the tax credits allowed by the Nebraska Advantage Rural Development Act

1 for any project. In computing credits under the act, any investment or
2 employment which is eligible for benefits or used in determining benefits
3 under the Nebraska Advantage Act shall be subtracted from the increases
4 computed for determining the credits under section 77-27,188. New
5 investment or employment at a project location that results in the
6 meeting or maintenance of the employment or investment requirements, the
7 creation of credits, or refunds of taxes under the Employment and
8 Investment Growth Act shall not be considered new investment or
9 employment for purposes of the Nebraska Advantage Act. The use of
10 carryover credits under the Employment and Investment Growth Act, the
11 Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the
12 Quality Jobs Act shall not preclude investment and employment from being
13 considered new investment or employment under the Nebraska Advantage Act.
14 The use of property tax exemptions at the project under the Employment
15 and Investment Growth Act shall not preclude investment not eligible for
16 the property tax exemption from being considered new investment under the
17 Nebraska Advantage Act.

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

27 (9) The taxpayer may request that an agreement be modified if the
28 modification is consistent with the purposes of the act and does not
29 require a change in the description of the project. An agreement may not
30 be modified to a tier that would grant a higher level of benefits to the
31 taxpayer or to a tier 1 project. Once satisfied that the modification to

1 the agreement is consistent with the purposes stated in the act, the Tax
2 Commissioner and taxpayer may amend the agreement. For a tier 6 project,
3 the taxpayer must agree to limit the project to qualified activities
4 allowable under tier 2 and tier 4.

5 Sec. 4. (1) To facilitate accurate and thorough tax incentive
6 performance audits under section 50-1209, each taxpayer that has an
7 active agreement with the Department of Revenue to receive incentives
8 under the Nebraska Advantage Act shall, beginning in 2019, submit a
9 report to the Department of Revenue by October 31 of each year. The
10 report shall include the following information with respect to the
11 taxpayer's business operations in Nebraska:

12 (a) All federal employer identification numbers associated with the
13 taxpayer and with the members of the taxpayer's unitary group, if any;

14 (b) An identification of which federal employer identification
15 numbers include new employees;

16 (c) All unemployment insurance identification numbers associated
17 with the taxpayer and with the members of the taxpayer's unitary group,
18 if any;

19 (d) An identification of which unemployment insurance identification
20 numbers include new employees; and

21 (e) The amount of investment that was approved for credits in the
22 previous taxable year, identified by asset class as described in Internal
23 Revenue Service Publication 946, Tables B-1 and B-2.

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

29 (a) The taxpayer withdraws from participation in the Nebraska
30 Advantage Act; or

31 (b) The Department of Revenue terminates the taxpayer's

1 participation in the Nebraska Advantage Act.

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

7 (1) Tax returns;

8 (2) Administrative data bases and spreadsheets;

9 (3) Audits; and

10 (4) Contracts and agreements.

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

13 2. On page 1, strike beginning with "tax" in line 1 through line 9
14 and insert "revenue and taxation; to amend sections 77-5701 and 77-5723,
15 Revised Statutes Cumulative Supplement, 2016; to authorize the inspection
16 of certain tax return information; to provide a penalty for wrongful
17 disclosure of tax return information; to require additional application
18 information, the submission of certain reports, and the retention of
19 certain records and data under the Nebraska Advantage Act as prescribed;
20 to harmonize provisions; and to repeal the original sections."