

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 161**

FINAL READING

Introduced by Friesen, 34; McDonnell, 5.

Read first time January 09, 2017

Committee: Revenue

1 A BILL FOR AN ACT relating to the Nebraska Advantage Act; to amend  
2 sections 77-5726 and 77-5735, Revised Statutes Cumulative  
3 Supplement, 2016; to change provisions relating to a carryover  
4 period; to provide for applicability; and to repeal the original  
5 sections.

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

1 Section 1. Section 77-5726, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3 77-5726 (1)(a) The credits prescribed in section 77-5725 for a year  
4 shall be established by filing the forms required by the Tax Commissioner  
5 with the income tax return for the taxable year which includes the end of  
6 the year the credits were earned. The credits may be used and shall be  
7 applied in the order in which they were first allowed. The credits may be  
8 used after any other nonrefundable credits to reduce the taxpayer's  
9 income tax liability imposed by sections 77-2714 to 77-27,135. Credits  
10 may be used beginning with the taxable year which includes December 31 of  
11 the year the required minimum levels were reached. The last year for  
12 which credits may be used is the taxable year which includes December 31  
13 of the last year of the carryover period. Any decision on how part of the  
14 credit is applied shall not limit how the remaining credit could be  
15 applied under this section.

16 (b) The taxpayer may use the credit provided in subsection (3) of  
17 section 77-5725 to reduce the taxpayer's income tax withholding employer  
18 or payor tax liability under section 77-2756 or 77-2757 to the extent  
19 such liability is attributable to the number of new employees at the  
20 project, excluding any compensation in excess of one million dollars paid  
21 to any one employee during the year. The taxpayer may use the credit  
22 provided in subsection (4) of section 77-5725 to reduce the taxpayer's  
23 income tax withholding employer or payor tax liability under section  
24 77-2756 or 77-2757 to the extent such liability is attributable to all  
25 employees employed at the project, other than base-year employees and  
26 excluding any compensation in excess of one million dollars paid to any  
27 one employee during the year. To the extent of the credit used, such  
28 withholding shall not constitute public funds or state tax revenue and  
29 shall not constitute a trust fund or be owned by the state. The use by  
30 the taxpayer of the credit shall not change the amount that otherwise  
31 would be reported by the taxpayer to the employee under section 77-2754

1 as income tax withheld and shall not reduce the amount that otherwise  
2 would be allowed by the state as a refundable credit on an employee's  
3 income tax return as income tax withheld under section 77-2755.

4 For a tier 1, tier 2, tier 3, or tier 4 project, the amount of  
5 credits used against income tax withholding shall not exceed the  
6 withholding attributable to new employees employed at the project,  
7 excluding any compensation in excess of one million dollars paid to any  
8 one employee during the year.

9 For a tier 6 project, the amount of credits used against income tax  
10 withholding shall not exceed the withholding attributable to all  
11 employees employed at the project, other than base-year employees and  
12 excluding any compensation in excess of one million dollars paid to any  
13 one employee during the year.

14 If the amount of credit used by the taxpayer against income tax  
15 withholding exceeds this amount, the excess withholding shall be returned  
16 to the Department of Revenue in the manner provided in section 77-2756,  
17 such excess amount returned shall be considered unused, and the amount of  
18 unused credits may be used as otherwise permitted in this section or  
19 shall carry over to the extent authorized in subdivision (1)(e) of this  
20 section.

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

27 (d) The credits earned for a tier 6 project may be used to obtain a  
28 payment from the state equal to the real property taxes due after the  
29 year the required levels of employment and investment were met and before  
30 the end of the carryover period, for real property that is included in  
31 such project and acquired by the taxpayer, whether by lease or purchase,

1 after the date the application was filed. Once the required levels of  
2 employment and investment for a tier 2 large data center project have  
3 been met, the credits earned for a tier 2 large data center project may  
4 be used to obtain a payment from the state equal to the real property  
5 taxes due after the year of application and before the end of the  
6 carryover period, for real property that is included in such project and  
7 acquired by the taxpayer, whether by lease or purchase, after the date  
8 the application was filed. The payment from the state shall be made only  
9 after payment of the real property taxes have been made to the county as  
10 required by law. Payments shall not be allowed for any taxes paid on real  
11 property for which the taxes are divided under section 18-2147 or 58-507.

12 (e) Credits may be carried over until fully utilized, except that  
13 such credits may not be carried over more than nine years after the year  
14 of application for a tier 1 or tier 3 project, fourteen years after the  
15 year of application for a tier 2 or tier 4 project, or more than sixteen  
16 years ~~one year~~ past the end of the entitlement period for a tier 6  
17 project.

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

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

24 (c) Refund claims for materials purchased by a purchasing agent  
25 shall include:

26 (i) A copy of the purchasing agent appointment;

27 (ii) The contract price; and

28 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of  
29 section 77-5725, a certification by the contractor or repairperson of the  
30 percentage of the materials incorporated into or annexed to the project  
31 on which sales and use taxes were paid to Nebraska after appointment as

1 purchasing agent; or

2 (B) For refunds under subdivision (2)(a)(iv) of section 77-5725, a  
3 certification by the contractor or repairperson of the percentage of the  
4 contract price that represents the cost of materials annexed to the  
5 project and the percentage of the materials annexed to the project on  
6 which sales and use taxes were paid to Nebraska after appointment as  
7 purchasing agent.

8 (d) All refund claims shall be filed, processed, and allowed as any  
9 other claim under section 77-2708, except that the amounts allowed to be  
10 refunded under the Nebraska Advantage Act shall be deemed to be  
11 overpayments and shall be refunded notwithstanding any limitation in  
12 subdivision (2)(a) of section 77-2708. The refund may be allowed if the  
13 claim is filed within three years from the end of the year the required  
14 levels of employment and investment are met or within the period set  
15 forth in section 77-2708.

16 (e) If a claim for a refund of sales and use taxes under the Local  
17 Option Revenue Act or sections 13-319, 13-324, and 13-2813 of more than  
18 twenty-five thousand dollars is filed by June 15 of a given year, the  
19 refund shall be made on or after November 15 of the same year. If such a  
20 claim is filed on or after June 16 of a given year, the refund shall not  
21 be made until on or after November 15 of the following year. The Tax  
22 Commissioner shall notify the affected city, village, county, or  
23 municipal county of the amount of refund claims of sales and use taxes  
24 under the Local Option Revenue Act or sections 13-319, 13-324, and  
25 13-2813 that are in excess of twenty-five thousand dollars on or before  
26 July 1 of the year before the claims will be paid under this section.

27 (f) Interest shall not be allowed on any taxes refunded under the  
28 Nebraska Advantage Act.

29 (3) The appointment of purchasing agents shall be recognized for the  
30 purpose of changing the status of a contractor or repairperson as the  
31 ultimate consumer of tangible personal property purchased after the date

1 of the appointment which is physically incorporated into or annexed to  
2 the project and becomes the property of the owner of the improvement to  
3 real estate or the taxpayer. The purchasing agent shall be jointly liable  
4 for the payment of the sales and use tax on the purchases with the owner  
5 of the property.

6 (4) A determination that a taxpayer is not engaged in a qualified  
7 business or has failed to meet or maintain the required levels of  
8 employment or investment for incentives, exemptions, or recapture may be  
9 protested within sixty days after the mailing of the written notice of  
10 the proposed determination. If the notice of proposed determination is  
11 not protested within the sixty-day period, the proposed determination is  
12 a final determination. If the notice is protested, the Tax Commissioner  
13 shall issue a written order resolving such protests. The written order of  
14 the Tax Commissioner resolving a protest may be appealed to the district  
15 court of Lancaster County within thirty days after the issuance of the  
16 order.

17 Sec. 2. Section 77-5735, Revised Statutes Cumulative Supplement,  
18 2016, is amended to read:

19 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,  
20 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws  
21 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to  
22 all applications filed on and after April 18, 2008. For all applications  
23 filed prior to such date, the provisions of the Nebraska Advantage Act as  
24 they existed immediately prior to such date apply.

25 (2) The changes made in sections 77-5725 and 77-5726 by Laws 2010,  
26 LB879, apply to all applications filed on or after July 15, 2010. For all  
27 applications filed prior to such date, the taxpayer may make a one-time  
28 election, within the time period prescribed by the Tax Commissioner, to  
29 have the changes made in sections 77-5725 and 77-5726 by Laws 2010,  
30 LB879, apply to such taxpayer's application, or in the absence of such an  
31 election, the provisions of the Nebraska Advantage Act as they existed

1 immediately prior to July 15, 2010, apply to such application.

2 (3) The changes made in sections 77-5707, 77-5715, 77-5719, and  
3 77-5725 by Laws 2010, LB918, apply to all applications filed on or after  
4 July 15, 2010. For all applications filed prior to such date, the  
5 provisions of the Nebraska Advantage Act as they existed immediately  
6 prior to such date apply.

7 (4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715,  
8 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all  
9 applications filed on or after March 8, 2012. For all applications filed  
10 prior to such date, the provisions of the Nebraska Advantage Act as they  
11 existed immediately prior to such date apply.

12 (5) The changes made in sections 77-5707.01, 77-5709, 77-5712,  
13 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all  
14 applications filed on or after September 6, 2013. For all applications  
15 filed prior to such date, the provisions of the Nebraska Advantage Act as  
16 they existed immediately prior to such date apply.

17 (6) The changes made in section 77-5726 by this legislative bill  
18 apply to all applications filed before, on, or after the effective date  
19 of this act.

20 Sec. 3. Original sections 77-5726 and 77-5735, Revised Statutes  
21 Cumulative Supplement, 2016, are repealed.