

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 437

Introduced by Linehan, 39.

Read first time January 18, 2019

Committee: Revenue

1 A BILL FOR AN ACT relating to the Nebraska Advantage Act; to amend
2 section 77-5725, Reissue Revised Statutes of Nebraska; to change
3 application deadlines; to harmonize provisions; and to repeal the
4 original section.

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

1 Section 1. Section 77-5725, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-5725 (1) Applicants may qualify for benefits under the Nebraska
4 Advantage Act in one of six tiers:

5 (a) Tier 1, investment in qualified property of at least one million
6 dollars and the hiring of at least ten new employees. There shall be no
7 new project applications for benefits under this tier filed after
8 December 31, XXXX 2020. All complete project applications filed on or
9 before December 31, XXXX 2020, shall be considered by the Tax
10 Commissioner and approved if the project and taxpayer qualify for
11 benefits. Agreements may be executed with regard to completed project
12 applications filed on or before December 31, XXXX 2020. All project
13 agreements pending, approved, or entered into before such date shall
14 continue in full force and effect;

15 (b) Tier 2, (i) investment in qualified property of at least three
16 million dollars and the hiring of at least thirty new employees or (ii)
17 for a large data center project, investment in qualified property for the
18 data center of at least two hundred million dollars and the hiring for
19 the data center of at least thirty new employees. There shall be no new
20 project applications for benefits under this tier filed after December
21 31, XXXX 2020. All complete project applications filed on or before
22 December 31, XXXX 2020, shall be considered by the Tax Commissioner and
23 approved if the project and taxpayer qualify for benefits. Agreements may
24 be executed with regard to completed project applications filed on or
25 before December 31, XXXX 2020. All project agreements pending, approved,
26 or entered into before such date shall continue in full force and effect;

27 (c) Tier 3, the hiring of at least thirty new employees. There shall
28 be no new project applications for benefits under this tier filed after
29 December 31, XXXX 2020. All complete project applications filed on or
30 before December 31, XXXX 2020, shall be considered by the Tax
31 Commissioner and approved if the project and taxpayer qualify for

1 benefits. Agreements may be executed with regard to completed project
2 applications filed on or before December 31, ~~XXXX 2020~~. All project
3 agreements pending, approved, or entered into before such date shall
4 continue in full force and effect;

5 (d) Tier 4, investment in qualified property of at least ten million
6 dollars and the hiring of at least one hundred new employees. There shall
7 be no new project applications for benefits under this tier filed after
8 December 31, ~~XXXX 2020~~. All complete project applications filed on or
9 before December 31, ~~XXXX 2020~~, shall be considered by the Tax
10 Commissioner and approved if the project and taxpayer qualify for
11 benefits. Agreements may be executed with regard to completed project
12 applications filed on or before December 31, ~~XXXX 2020~~. All project
13 agreements pending, approved, or entered into before such date shall
14 continue in full force and effect;

15 (e) Tier 5, (i) investment in qualified property of at least thirty
16 million dollars or (ii) for the production of electricity by using one or
17 more sources of renewable energy to produce electricity for sale as
18 described in subdivision (1)(j) of section 77-5715, investment in
19 qualified property of at least twenty million dollars. Failure to
20 maintain an average number of equivalent employees as defined in section
21 77-5727 greater than or equal to the number of equivalent employees in
22 the base year shall result in a partial recapture of benefits. There
23 shall be no new project applications for benefits under this tier filed
24 after December 31, ~~XXXX 2020~~. All complete project applications filed on
25 or before December 31, ~~XXXX 2020~~, shall be considered by the Tax
26 Commissioner and approved if the project and taxpayer qualify for
27 benefits. Agreements may be executed with regard to completed project
28 applications filed on or before December 31, ~~XXXX 2020~~. All project
29 agreements pending, approved, or entered into before such date shall
30 continue in full force and effect; and

31 (f) Tier 6, investment in qualified property of at least ten million

1 dollars and the hiring of at least seventy-five new employees or the
2 investment in qualified property of at least one hundred million dollars
3 and the hiring of at least fifty new employees. There shall be no new
4 project applications for benefits under this tier filed after December
5 31, ~~XXXX 2020~~. All complete project applications filed on or before
6 December 31, ~~XXXX 2020~~, shall be considered by the Tax Commissioner and
7 approved if the project and taxpayer qualify for benefits. Agreements may
8 be executed with regard to completed project applications filed on or
9 before December 31, ~~XXXX 2020~~. All project agreements pending, approved,
10 or entered into before such date shall continue in full force and effect.

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

15 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
16 5, or tier 6 project or a refund of one-half of all sales and use taxes
17 for a tier 1 project paid under the Local Option Revenue Act, the
18 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813
19 from the date of the application through the meeting of the required
20 levels of employment and investment for all purchases, including rentals,
21 of:

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

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

27 (iii) Tangible personal property by a contractor or repairperson
28 after appointment as a purchasing agent of the owner of the improvement
29 to real estate when such property is incorporated into real estate as a
30 part of a project. The refund shall be based on fifty percent of the
31 contract price, excluding any land, as the cost of materials subject to

1 the sales and use tax;

2 (iv) Tangible personal property by a contractor or repairperson
3 after appointment as a purchasing agent of the taxpayer when such
4 property is annexed to, but not incorporated into, real estate as a part
5 of a project. The refund shall be based on the cost of materials subject
6 to the sales and use tax that were annexed to real estate; and

7 (v) Tangible personal property by a contractor or repairperson after
8 appointment as a purchasing agent of the taxpayer when such property is
9 both (A) incorporated into real estate as a part of a project and (B)
10 annexed to, but not incorporated into, real estate as a part of a
11 project. The refund shall be based on fifty percent of the contract
12 price, excluding any land, as the cost of materials subject to the sales
13 and use tax; and

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

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

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

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

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

21 (c) Nebraska average annual wage means the Nebraska average weekly
22 wage times fifty-two.

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

28 (5) Any taxpayer who has met the required levels of employment and
29 investment for a tier 2 or tier 4 project shall receive a credit equal to
30 ten percent of the investment made in qualified property at the project.
31 Any taxpayer who has met the required levels of investment and employment

1 for a tier 1 project shall receive a credit equal to three percent of the
2 investment made in qualified property at the project. Any taxpayer who
3 has met the required levels of investment and employment for a tier 6
4 project shall receive a credit equal to fifteen percent of the investment
5 made in qualified property at the project.

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

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

15 (8)(a) Property described in subdivisions (8)(c)(i) through (v) of
16 this section used in connection with a project or projects, whether
17 purchased or leased, and placed in service by the taxpayer after the date
18 the application was filed shall constitute separate classes of property
19 and are eligible for exemption under the conditions and for the time
20 periods provided in subdivision (8)(b) of this section.

21 (b)(i) A taxpayer who has met the required levels of employment and
22 investment for a tier 4 project shall receive the exemption of property
23 in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer
24 who has met the required levels of employment and investment for a tier 6
25 project shall receive the exemption of property in subdivisions (8)(c)
26 (ii), (iii), (iv), and (v) of this section. Such property shall be
27 eligible for the exemption from the first January 1 following the end of
28 the year during which the required levels were exceeded through the ninth
29 December 31 after the first year property included in subdivisions (8)(c)
30 (ii), (iii), (iv), and (v) of this section qualifies for the exemption.

31 (ii) A taxpayer who has filed an application that describes a tier 2

1 large data center project or a project under tier 4 or tier 6 shall
2 receive the exemption of property in subdivision (8)(c)(i) of this
3 section beginning with the first January 1 following the date the
4 property was placed in service. The exemption shall continue through the
5 end of the period property included in subdivisions (8)(c)(ii), (iii),
6 (iv), and (v) of this section qualifies for the exemption.

7 (iii) A taxpayer who has filed an application that describes a tier
8 2 large data center project or a tier 5 project that is sequential to a
9 tier 2 large data center project for which the entitlement period has
10 expired shall receive the exemption of all property in subdivision (8)(c)
11 of this section beginning any January 1 after the date the property was
12 placed in service. Such property shall be eligible for exemption from the
13 tax on personal property from the January 1 preceding the first claim for
14 exemption approved under this subdivision through the ninth December 31
15 after the year the first claim for exemption is approved.

16 (iv) A taxpayer who has a project for an Internet web portal or a
17 data center and who has met the required levels of employment and
18 investment for a tier 2 project or the required level of investment for a
19 tier 5 project, taking into account only the employment and investment at
20 the web portal or data center project, shall receive the exemption of
21 property in subdivision (8)(c)(ii) of this section. Such property shall
22 be eligible for the exemption from the first January 1 following the end
23 of the year during which the required levels were exceeded through the
24 ninth December 31 after the first year any property included in
25 subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies
26 for the exemption.

27 (v) Such investment and hiring of new employees shall be considered
28 a required level of investment and employment for this subsection and for
29 the recapture of benefits under this subsection only.

30 (c) The following property used in connection with such project or
31 projects, whether purchased or leased, and placed in service by the

1 taxpayer after the date the application was filed shall constitute
2 separate classes of personal property:

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

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

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

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

23 (v) For a tier 2 large data center project or tier 6 project, any
24 other personal property located at the project.

25 (d) In order to receive the property tax exemptions allowed by
26 subdivision (8)(c) of this section, the taxpayer shall annually file a
27 claim for exemption with the Tax Commissioner on or before May 1. The
28 form and supporting schedules shall be prescribed by the Tax Commissioner
29 and shall list all property for which exemption is being sought under
30 this section. A separate claim for exemption must be filed for each
31 project and each county in which property is claimed to be exempt. A copy

1 of this form must also be filed with the county assessor in each county
2 in which the applicant is requesting exemption. The Tax Commissioner
3 shall determine whether a taxpayer is eligible to obtain exemption for
4 personal property based on the criteria for exemption and the eligibility
5 of each item listed for exemption and, on or before August 1, certify
6 such to the taxpayer and to the affected county assessor.

7 (9)(a) The investment thresholds in this section for a particular
8 year of application shall be adjusted by the method provided in this
9 subsection, except that the investment threshold for a tier 5 project
10 described in subdivision (1)(e)(ii) of this section shall not be
11 adjusted.

12 (b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier
13 5 projects described in subdivision (1)(e)(ii) of this section, beginning
14 October 1, 2006, and each October 1 thereafter, the average Producer
15 Price Index for all commodities, published by the United States
16 Department of Labor, Bureau of Labor Statistics, for the most recent
17 twelve available periods shall be divided by the Producer Price Index for
18 the first quarter of 2006 and the result multiplied by the applicable
19 investment threshold. The investment thresholds shall be adjusted for
20 cumulative inflation since 2006.

21 (c) For tier 6, beginning October 1, 2008, and each October 1
22 thereafter, the average Producer Price Index for all commodities,
23 published by the United States Department of Labor, Bureau of Labor
24 Statistics, for the most recent twelve available periods shall be divided
25 by the Producer Price Index for the first quarter of 2008 and the result
26 multiplied by the applicable investment threshold. The investment
27 thresholds shall be adjusted for cumulative inflation since 2008.

28 (d) For a tier 2 large data center project, beginning October 1,
29 2012, and each October 1 thereafter, the average Producer Price Index for
30 all commodities, published by the United States Department of Labor,
31 Bureau of Labor Statistics, for the most recent twelve available periods

1 shall be divided by the Producer Price Index for the first quarter of
2 2012 and the result multiplied by the applicable investment threshold.
3 The investment thresholds shall be adjusted for cumulative inflation
4 since 2012.

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

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

12 Sec. 2. Original section 77-5725, Reissue Revised Statutes of
13 Nebraska, is repealed.