

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 535

Introduced by Cavanaugh, 6; DeBoer, 10; Hansen, M., 26; Hunt, 8.

Read first time January 22, 2019

Committee: Revenue

- 1 A BILL FOR AN ACT relating to the Nebraska Advantage Act; to amend
- 2 sections 77-5715 and 77-5735, Reissue Revised Statutes of Nebraska;
- 3 to redefine a term; to provide for applicability of changes; and to
- 4 repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5715, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5 project,
4 qualified business means any business that meets the requirements of
5 subsection (5) of this section and that is engaged in:

6 (a) The conducting of research, development, or testing for
7 scientific, agricultural, animal husbandry, food product, or industrial
8 purposes;

9 (b) The performance of data processing, telecommunication,
10 insurance, or financial services. For purposes of this subdivision,
11 financial services includes only financial services provided by any
12 financial institution subject to tax under Chapter 77, article 38, or any
13 person or entity licensed by the Department of Banking and Finance or the
14 federal Securities and Exchange Commission and telecommunication services
15 includes community antenna television service, Internet access, satellite
16 ground station, call center, or telemarketing;

17 (c) The assembly, fabrication, manufacture, or processing of
18 tangible personal property;

19 (d) The administrative management of the taxpayer's activities,
20 including headquarter facilities relating to such activities or the
21 administrative management of any of the activities of any business entity
22 or entities in which the taxpayer or a group of its shareholders holds
23 any direct or indirect ownership interest of at least ten percent,
24 including headquarter facilities relating to such activities;

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

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

31 (g) The sale of software development services, computer systems

1 design, product testing services, or guidance or surveillance systems
2 design services or the licensing of technology if the taxpayer derives at
3 least seventy-five percent of the sales or revenue attributable to such
4 activities relating to the project from sales or licensing either to
5 customers who are not related persons and located outside the state or to
6 the United States Government, including sales of such services, systems,
7 or products delivered by providing the customer with software or access
8 to software over the Internet or by other electronic means, regardless of
9 whether the software or data accessed by customers is stored on a
10 computer owned by the applicant, the customer, or a third party and
11 regardless of whether the computer storing the software or data is
12 located at the project;

13 (h) The research, development, and maintenance of an Internet web
14 portal. For purposes of this subdivision, Internet web portal means an
15 Internet site that allows users to access, search, and navigate the
16 Internet;

17 (i) The research, development, and maintenance of a data center;

18 (j) The production of electricity by using one or more sources of
19 renewable energy to produce electricity for sale. For purposes of this
20 subdivision, sources of renewable energy includes, but is not limited to,
21 wind, solar, geothermal, hydroelectric, biomass, and transmutation of
22 elements; or

23 (k) Any combination of the activities listed in this subsection.

24 (2) For a tier 1 project, qualified business means any business that
25 meets the requirements of subsection (5) of this section and that is
26 engaged in:

27 (a) The conducting of research, development, or testing for
28 scientific, agricultural, animal husbandry, food product, or industrial
29 purposes;

30 (b) The assembly, fabrication, manufacture, or processing of
31 tangible personal property;

1 (c) The sale of software development services, computer systems
2 design, product testing services, or guidance or surveillance systems
3 design services or the licensing of technology if the taxpayer derives at
4 least seventy-five percent of the sales or revenue attributable to such
5 activities relating to the project from sales or licensing either to
6 customers who are not related persons and are located outside the state
7 or to the United States Government, including sales of such services,
8 systems, or products delivered by providing the customer with software or
9 access to software over the Internet or by other electronic means,
10 regardless of whether the software or data accessed by customers is
11 stored on a computer owned by the applicant, the customer, or a third
12 party and regardless of whether the computer storing the software or data
13 is located at the project; or

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

15 (3) For a tier 6 project, qualified business means any business that
16 meets the requirements of subsection (5) of this section, except a
17 business excluded by subsection (4) of this section.

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

25 (5) A qualified business shall not discriminate against any employee
26 or applicant for employment because of race, color, religion, sex,
27 disability, marital status, national origin, sexual orientation, or
28 gender identity.

29 Sec. 2. Section 77-5735, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,

1 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws
2 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to
3 all applications filed on and after April 18, 2008. For all applications
4 filed prior to such date, the provisions of the Nebraska Advantage Act as
5 they existed immediately prior to such date apply.

6 (2) The changes made in sections 77-5725 and 77-5726 by Laws 2010,
7 LB879, apply to all applications filed on or after July 15, 2010. For all
8 applications filed prior to such date, the taxpayer may make a one-time
9 election, within the time period prescribed by the Tax Commissioner, to
10 have the changes made in sections 77-5725 and 77-5726 by Laws 2010,
11 LB879, apply to such taxpayer's application, or in the absence of such an
12 election, the provisions of the Nebraska Advantage Act as they existed
13 immediately prior to July 15, 2010, apply to such application.

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

19 (4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715,
20 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all
21 applications filed on or after March 8, 2012. For all applications filed
22 prior to such date, the provisions of the Nebraska Advantage Act as they
23 existed immediately prior to such date apply.

24 (5) The changes made in sections 77-5707.01, 77-5709, 77-5712,
25 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all
26 applications filed on or after September 6, 2013. For all applications
27 filed prior to such date, the provisions of the Nebraska Advantage Act as
28 they existed immediately prior to such date apply.

29 (6) The changes made in section 77-5726 by Laws 2017, LB161, apply
30 to all applications filed before, on, or after August 24, 2017.

31 (7) The changes made in section 77-5715 by this legislative bill

1 apply to all applications filed on or after the effective date of this
2 act. For all applications filed prior to such date, the provisions of the
3 Nebraska Advantage Act as they existed immediately prior to such date
4 apply.

5 Sec. 3. Original sections 77-5715 and 77-5735, Reissue Revised
6 Statutes of Nebraska, are repealed.