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DATE PREPARED: February 13, 2013
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LB 572

Revision: 00

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)

	FY 2013-14		FY 2014-15	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	$176,960	($11,900,000)	$364,280	($12,495,000)
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	$176,960	($11,900,000)	$364,280	($12,495,000)

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 572 amends the Nebraska Revenue Act of 1967 and the Nebraska Advantage Act.

The bill amends Section 77-2715.08 regarding the special capital gains exclusion, to alter certain definitions and change ownership requirements. Essentially, the term “entity” replaces “corporation” and “equity” replaces “capital stock” and “owner” replaces “shareholder” wherever the terms are found in this section and in Section 77-2715.09. In addition, “limited liability company” is added to the definition of what was previously the definition of “corporation” and is now the definition of “entity.”

The revised definition now reads, “Entity means any corporation or limited liability company which, at 12:01 a.m. on the date of the first sale or exchange for which the election is made, has been in existence and actively doing business in this state for at least three years.”

Entity now also includes a limited liability company which is a member of a unitary group of limited liability companies.

The Nebraska Advantage Act is amended to change the definition of compensation to include pretax deductions, employer retirement contributions, etc.; changes how the wage rate is determined; adds a provision that investment also includes any sales or use taxes that were in the original cost of the property or in the average net annual rent; modifies the definition of qualified business to include the sale of services in a specific situation; changes the requirements on additional documentation of interdependent locations and a headquarters; and modifies requirements of electronic verification of work eligibility status.

The bill requires the Tax Commissioner to make a determination on approval or disapproval of an Advantage Act application within 180-days after the date of the application. If no determination is made within that time period the application is deemed to be approved. However, if during that original 180-day period the Tax Commissioner requests additional information, the 180-day period begins from that point. Following approval of an application the Tax Commissioner and the applicant are to enter into an agreement within 180-days.

LB 572 extends the sunset date for filing project applications for Tier 1, Tier 3, and Tier 6 by eight years. The current sunset date for Tiers 1 and 3 is December 31, 2015 and January 1, 2016 for Tier 6.

The bill now provides that Tier 5 credits may be carried over for seven years after the year of application. NOTE: Tier 5 projects receive a refund of all sales taxes paid on capital purchases during the attainment and entitlement period. A Tier 5 project may also receive a personal property tax exemption on computer systems for an Internet web portal or data center. They do not appear to receive a credit that could be carried over

The bill would allow a taxpayer to request a qualification audit from the Tax Commissioner to determine whether the taxpayer is engaged in a qualified business and whether they have met or maintained the necessary levels of investment and employment. Unless an extension is agreed upon, the Tax Commissioner is to complete the audit within 180-days.

The changes proposed by LB 572 are to apply only to those applications filed on or after the effective date of the bill.

The Department of Revenue indicates that to meet the provisions of LB 572 regarding the several 180-day requirements, they will have to add staff. Because the bill does not allow an extension of the 180-day deadline per the request of the taxpayer or the Department for entering into project agreements and conducting audits upon the request of a taxpayer, the Department anticipates a significant increase in the number of protests subject to an administrative hearing beginning in FY2014-15. Additional audit staff will also be necessary for the increased number of audits due to increased benefits relating to both the special capital gains exclusion and the Advantage Act provisions.

The Department estimates the following fiscal impact to the General Fund as a result of LB 572:

Fiscal Year:	Nebraska Advantage Act:	Capital Gain:	Total:
2013-14:	$ 0	($11,900,000)	($11,900,000)
2014-15:	$ 0	($12,495,000)	($12,495,000)
2015-16:	$ 0	($13,120,000)	($13,120,000)
2016-17:	($3,264,000)	($13,776,000)	($17,040,000)
2017-18:	($4,336,000)	($14,465,000)	($18,801,000)
2018-19:	($6,643,000)	($15,188,000)	($21,831,000)
2019-20:	($9,211,000)	($15,948,000)	($25,159,000)
2020-21:	($7,631,000)	($16,745,000)	($24,376,000)

The Department indicates they will need an additional 3.0 FTE in FY2013-14, 6.0 FTE in FY2014-15, and 8.0 FTE in FY2015-16. These will be for auditor, fiscal compliance analyst, and attorney III positions.

We agree with the Department's estimate of cost and have no basis to disagree with the Department's estimate of fiscal impact to the General Fund.

LB 572 Fiscal Note 2013

State Agency Estimate

State Agency Name: Department of Revenue							Date Due LFA:	02/11/2013	
Approved by: Douglas Ewald		Date Prepared:	02/08/2013				Phone: 471-5896		

	FY 2013-2014		FY 2014-2015		FY 2015-2016	
	Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue
General Funds	$176,960	($11,900,000)	$364,280	($12,495,000)	$502,340	($13,120,000)
Cash Funds						
Federal Funds						
Other Funds						
Total Funds	$176,960	($11,900,000)	$364,280	($12,495,000)	$502,340	($13,120,000)

LB 572 changes ownership requirements for purposes of qualifying for the special capital gains exclusion and changes various definitions and requirements under the Nebraska Advantage Act (Act).

LB 572 allows an individual or trust to qualify for the special capital gains exclusion if the entity had at least five owners five days before the first sale or exchange for which the election is made and the business has been in existence and actively doing business in this state for three years. LB 572 allows owners of qualifying limited liability companies (LLC) to qualify for the special capital gains exclusion if the LLC's book value does not include 25% real estate as indicated on the LLC's most recent Nebraska tax return.

LB 572 makes the following changes to the Nebraska Advantage Act: changes the definition of compensation to include pretax deductions, employer contributions to a retirement plan qualified under IRC § 401(a), and amounts paid by an employer to or on behalf of an employee as part of a wellness incentive program or smoking-cessation program; changes the average annual wage calculation to include the number of weeks in the taxpayer's tax year multiplied by 52; expands the definition of investment to include refundable sales or use taxes included in the original cost of property or average net annual rent; allows the Nebraska average weekly wage calculation to be calculated for only the weeks employees are paid; allows an employer to e-verify legal presence of all new employees at any time; authorizes calculation of benefits under the Act to include hours worked and compensation paid to an employee previously excluded because the employee's legal presence was not verified; expands the definition of qualified business to include exported services if at least 75% of the sales are derived from unrelated persons; creates a irrefutable presumption of interdependence for project locations directly controlled by a headquarters; authorizes a seven year carryover for tier 5 projects; and allows a pass-through entity to distribute credits in the same manner as net income.

Major Objects of Expenditure

Class Code	Classification Title	13-14 FTE	14-15 FTE	15-16 FTE	13-14 Expenditures	14-15 Expenditures	15-16 Expenditures
A21212	Auditor	3.0	4.0	5.0	$113,880	$155,250	$198,430
A21211	Fiscal Compliance Analyst	0.0	1.0	1.0	$0	$36,110	$36,920
G31113	Attorney III	0.0	1.0	2.0	$0	$63,360	$129,570
Benefits……					$37,580	$84,060	$120,420
Operating Costs……							
Travel……							
Capital Outlay……					$25,500	$25,500	$17,000
Aid……							
Capital Improvements……							
Total……					$176,960	$364,280	$502,340

LB 572 requires the Tax Commissioner to approve or deny an application within 180 days after the date of application or the application will be deemed approved. The Tax Commissioner must also sign an agreement with a taxpayer, or hold an administrative hearing and issue an administrative ruling on a taxpayer protest, within 180 days after approval of the application or receipt of the denial or protest. Taxpayers may also request a qualification or maintenance audit, which must be completed by the Department, absent an extension agreement between the Department and taxpayer, within 180 days after request.

LB 572 extends the date in which the Tax Commissioner may accept an application for tiers 1, 3, and 6 until December 31, 2023. The changes to the Act apply to applications filed on or after the effective date of LB 572.

The estimated total reduction to the General Fund would be as follows:

Fiscal Year	Nebraska Advantage Act	Capital Gain	Total Cost
FY 2013-2014	$ -	$ 11,900,000	$ 11,900,000
FY 2014-2015	$ -	$ 12,495,000	$ 12,495,000
FY 2015-2016	$ -	$ 13,120,000	$ 13,120,000
FY 2016-2017	$ 3,264,000	$ 13,776,000	$ 17,040,000
FY 2017-2018	$ 4,336,000	$ 14,465,000	$ 18,801,000
FY 2018-2019	$ 6,643,000	$ 15,188,000	$ 21,831,000
FY 2019-2020	$ 9,211,000	$ 15,948,000	$ 25,159,000
FY 2020-2021	$ 7,631,000	$ 16,745,000	$ 24,376,000
FY 2021-2022	$ 8,620,000	$ 17,582,000	$ 26,202,000

To implement LB 572, the Department will require additional staff to meet the 180 day deadline for approving or denying applications, entering into project agreements, conducting audits upon the request of a taxpayer, and holding administrative hearings and issuing administrative rulings. Since LB 572 does not allow for an extension of the 180 day deadline per the request of the taxpayer or Department for entering into project agreements and conducting audits upon the request of a taxpayer, the Department anticipates a significant increase in the number of protests subject to an administrative hearing beginning in FY2014/15. Additional audit staff will also be needed for the increased number of audits due to increased benefits in LB 572 relating to both the special capital gains exclusion and the Nebraska Advantage Act provisions.