

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1088

FINAL READING

Introduced by Linehan, 39; Jacobson, 42; McDonnell, 5.

Read first time January 09, 2024

Committee: Revenue

- 1 A BILL FOR AN ACT relating to the Nebraska Advantage Act; to amend
- 2 sections 77-5723, 77-5727, and 77-5735, Revised Statutes Cumulative
- 3 Supplement, 2022; to change the time period in which the required
- 4 levels of employment and investment must be met for certain
- 5 projects; to provide for applicability; to harmonize provisions; and
- 6 to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5723, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 77-5723 (1) In order to utilize the incentives set forth in the
4 Nebraska Advantage Act, the taxpayer shall file an application, on a form
5 developed by the Tax Commissioner, requesting an agreement with the Tax
6 Commissioner.

7 (2) The application shall contain:

8 (a) A written statement describing the plan of employment and
9 investment for a qualified business in this state;

10 (b) Sufficient documents, plans, and specifications as required by
11 the Tax Commissioner to support the plan and to define a project;

12 (c) If more than one location within this state is involved,
13 sufficient documentation to show that the employment and investment at
14 different locations are interdependent parts of the plan. A headquarters
15 shall be presumed to be interdependent with each other location directly
16 controlled by such headquarters. A showing that the parts of the plan
17 would be considered parts of a unitary business for corporate income tax
18 purposes shall not be sufficient to show interdependence for the purposes
19 of this subdivision;

20 (d) A nonrefundable application fee of one thousand dollars for a
21 tier 1 project, two thousand five hundred dollars for a tier 2, tier 3,
22 or tier 5 project, five thousand dollars for a tier 4 project, and ten
23 thousand dollars for a tier 6 project. The fee shall be credited to the
24 Nebraska Incentives Fund; and

25 (e) A timetable showing the expected sales tax refunds and what year
26 they are expected to be claimed. The timetable shall include both direct
27 refunds due to investment and credits taken as sales tax refunds as
28 accurately as possible.

29 The application and all supporting information shall be confidential
30 except for the name of the taxpayer, the location of the project, the
31 amounts of increased employment and investment, and the information

1 required to be reported by sections 77-5731 and 77-5734.

2 (3) An application must be complete to establish the date of the
3 application. An application shall be considered complete once it contains
4 the items listed in subsection (2) of this section, regardless of the Tax
5 Commissioner's additional needs pertaining to information or
6 clarification in order to approve or not approve the application.

7 (4) Once satisfied that the plan in the application defines a
8 project consistent with the purposes stated in the Nebraska Advantage Act
9 in one or more qualified business activities within this state, that the
10 taxpayer and the plan will qualify for benefits under the act, and that
11 the required levels of employment and investment for the project will be
12 met within the applicable time period prescribed in this subsection ~~prior~~
13 ~~to the end of the fourth year after the year in which the application was~~
14 ~~submitted for a tier 1, tier 3, or tier 6 project or the end of the sixth~~
15 ~~year after the year in which the application was submitted for a tier 2,~~
16 ~~tier 4, or tier 5 project,~~ the Tax Commissioner shall approve the
17 application. For a tier 6 project submitted and approved by the Tax
18 Commissioner prior to December 1, 2020, or for any tier 1 or tier 3
19 project, the required levels of employment and investment shall be met
20 prior to the end of the fourth year after the year in which the
21 application was submitted. For a tier 6 project submitted and approved by
22 the Tax Commissioner on or after December 1, 2020, or for any tier 2,
23 tier 4, or tier 5 project, the required levels of employment and
24 investment shall be met prior to the end of the sixth year after the year
25 in which the application was submitted. For a tier 5 project that is
26 sequential to a tier 2 large data center project, the required level of
27 investment shall be met prior to the end of the fourth year after the
28 expiration of the tier 2 large data center project entitlement period
29 relating to sales tax exemptions.

30 (5) The Tax Commissioner shall make his or her determination to
31 approve or not approve an application within one hundred eighty days

1 after the date of the application. If the Tax Commissioner requests, by
2 mail or by electronic means, additional information or clarification from
3 the taxpayer in order to make his or her determination, such one-hundred-
4 eighty-day period shall be tolled from the time the Tax Commissioner
5 makes the request to the time he or she receives the requested
6 information or clarification from the taxpayer. The taxpayer and the Tax
7 Commissioner may also agree to extend the one-hundred-eighty-day period.
8 If the Tax Commissioner fails to make his or her determination within the
9 prescribed one-hundred-eighty-day period, the application shall be deemed
10 approved.

11 (6) Within one hundred eighty days after approval of the
12 application, the Tax Commissioner shall prepare and mail a written
13 agreement to the taxpayer for the taxpayer's signature. The taxpayer and
14 the Tax Commissioner shall enter into a written agreement. The taxpayer
15 shall agree to complete the project, and the Tax Commissioner, on behalf
16 of the State of Nebraska, shall designate the approved plan of the
17 taxpayer as a project and, in consideration of the taxpayer's agreement,
18 agree to allow the taxpayer to use the incentives contained in the
19 Nebraska Advantage Act. The application, and all supporting
20 documentation, to the extent approved, shall be considered a part of the
21 agreement. The agreement shall state:

22 (a) The levels of employment and investment required by the act for
23 the project;

24 (b) The time period under the act in which the required levels must
25 be met;

26 (c) The documentation the taxpayer will need to supply when claiming
27 an incentive under the act;

28 (d) The date the application was filed; and

29 (e) A requirement that the company update the Department of Revenue
30 annually on any changes in plans or circumstances which affect the
31 timetable of sales tax refunds as set out in the application. If the

1 company fails to comply with this requirement, the Tax Commissioner may
2 defer any pending sales tax refunds until the company does comply.

3 (7) The incentives contained in section 77-5725 shall be in lieu of
4 the tax credits allowed by the Nebraska Advantage Rural Development Act
5 for any project. In computing credits under the act, any investment or
6 employment which is eligible for benefits or used in determining benefits
7 under the Nebraska Advantage Act shall be subtracted from the increases
8 computed for determining the credits under section 77-27,188. New
9 investment or employment at a project location that results in the
10 meeting or maintenance of the employment or investment requirements, the
11 creation of credits, or refunds of taxes under the Employment and
12 Investment Growth Act shall not be considered new investment or
13 employment for purposes of the Nebraska Advantage Act. The use of
14 carryover credits under the Employment and Investment Growth Act, the
15 Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the
16 Quality Jobs Act shall not preclude investment and employment from being
17 considered new investment or employment under the Nebraska Advantage Act.
18 The use of property tax exemptions at the project under the Employment
19 and Investment Growth Act shall not preclude investment not eligible for
20 the property tax exemption from being considered new investment under the
21 Nebraska Advantage Act.

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

31 (9) The taxpayer may request that an agreement be modified if the

1 modification is consistent with the purposes of the act and does not
2 require a change in the description of the project. An agreement may not
3 be modified to a tier that would grant a higher level of benefits to the
4 taxpayer or to a tier 1 project. Once satisfied that the modification to
5 the agreement is consistent with the purposes stated in the act, the Tax
6 Commissioner and taxpayer may amend the agreement. For a tier 6 project,
7 the taxpayer must agree to limit the project to qualified activities
8 allowable under tier 2 and tier 4.

9 Sec. 2. Section 77-5727, Revised Statutes Cumulative Supplement,
10 2022, is amended to read:

11 77-5727 (1)(a) If the taxpayer fails either to meet the required
12 levels of employment or investment for the applicable project within the
13 time period prescribed in subsection (4) of section 77-5723 ~~by the end of~~
14 ~~the fourth year after the end of the year the application was submitted~~
15 ~~for a tier 1, tier 3, or tier 6 project or by the end of the sixth year~~
16 ~~after the end of the year the application was submitted for a tier 2,~~
17 ~~tier 4, or tier 5 project~~ or to utilize such project in a qualified
18 business at employment and investment levels at or above those required
19 in the agreement for the entire entitlement period, all or a portion of
20 the incentives set forth in the Nebraska Advantage Act shall be
21 recaptured or disallowed.

22 (b) In the case of a taxpayer who has failed to meet the required
23 levels of investment or employment within the required time period, all
24 reduction in the personal property tax because of the act shall be
25 recaptured.

26 (2) In the case of a taxpayer who has failed to maintain the project
27 at the required levels of employment or investment for the entire
28 entitlement period, any reduction in the personal property tax, any
29 refunds in tax or exemptions from tax allowed under subsection (2) of
30 section 77-5725, and any refunds or reduction in tax allowed because of
31 the use of a credit allowed under section 77-5725 shall be partially

1 recaptured from either the taxpayer or the owner of the improvement to
2 real estate and any carryovers of credits shall be partially disallowed.
3 The amount of the recapture shall be a percentage equal to the number of
4 years the taxpayer did not maintain the project at or above the required
5 levels of investment and employment divided by the number of years of the
6 project's entitlement period multiplied by the refunds and exemptions
7 allowed, reduction in personal property tax, the credits used, and the
8 remaining carryovers. In addition, the last remaining year of personal
9 property tax exemption shall be disallowed for each year the taxpayer did
10 not maintain such project at or above the required levels of employment
11 or investment.

12 (3) In the case of a taxpayer qualified under tier 5 who has failed
13 to maintain the average number of equivalent employees at the project at
14 the end of the six years following the year the taxpayer attained the
15 required amount of investment, any refunds or exemptions in tax allowed
16 under subsection (2) of section 77-5725 or any reduction in the personal
17 property tax under section 77-5725 shall be partially recaptured from the
18 taxpayer. The amount of recapture shall be the total amount of refunds,
19 exemptions, and reductions in tax allowed for all years times the
20 reduction in the average number of equivalent employees employed at the
21 end of the entitlement period from the number of equivalent employees
22 employed in the base year divided by the number of equivalent employees
23 employed in the base year. For purposes of this subsection, the average
24 number of equivalent employees shall be calculated at the end of the
25 entitlement period by adding the number of equivalent employees in the
26 year the taxpayer attains the required level of investment and each of
27 the next following six years and dividing the result by seven.

28 (4) If the taxpayer receives any refund, exemption, or reduction in
29 tax to which the taxpayer was not entitled or which was in excess of the
30 amount to which the taxpayer was entitled, the refund, exemption, or
31 reduction in tax shall be recaptured separate from any other recapture

1 otherwise required by this section. Any amount recaptured under this
2 subsection shall be excluded from the amounts subject to recapture under
3 other subsections of this section.

4 (5) Any refund, exemption, or reduction in tax due, to the extent
5 required to be recaptured, shall be deemed to be an underpayment of the
6 tax and shall be immediately due and payable. When tax benefits were
7 received in more than one year, the tax benefits received in the most
8 recent year shall be recovered first and then the benefits received in
9 earlier years up to the extent of the required recapture.

10 (6)(a) Except as provided in subdivision (6)(b) of this section, any
11 personal property tax that would have been due except for the exemption
12 allowed under the Nebraska Advantage Act, to the extent it becomes due
13 under this section, shall be considered delinquent and shall be
14 immediately due and payable to the county or counties in which the
15 property was located when exempted.

16 (b) For a tier 2 large data center project, any personal property
17 tax that would have been due except for the exemption under the Nebraska
18 Advantage Act, together with interest at the rate provided in section
19 45-104.01 from the original delinquency date of the tax that would have
20 been due until the date paid, to the extent it becomes due under this
21 section, shall be considered delinquent and shall be immediately payable
22 to the county or counties in which the property was located when
23 exempted.

24 (c) All amounts received by a county under this section shall be
25 allocated to each taxing unit levying taxes on tangible personal property
26 in the county in the same proportion that the levy on tangible personal
27 property of such taxing unit bears to the total levy of all of such
28 taxing units.

29 (7) Notwithstanding any other limitations contained in the laws of
30 this state, collection of any taxes deemed to be underpayments by this
31 section shall be allowed for a period of three years after the end of the

1 entitlement period.

2 (8) Any amounts due under this section shall be recaptured
3 notwithstanding other allowable credits and shall not be subsequently
4 refunded under any provision of the Nebraska Advantage Act unless the
5 recapture was in error.

6 (9) The recapture required by this section shall not occur if the
7 failure to maintain the required levels of employment or investment was
8 caused by an act of God or national emergency.

9 Sec. 3. Section 77-5735, Revised Statutes Cumulative Supplement,
10 2022, is amended to read:

11 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,
12 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws
13 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to
14 all applications filed on and after April 18, 2008. 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 (2) The changes made in sections 77-5725 and 77-5726 by Laws 2010,
18 LB879, apply to all applications filed on or after July 15, 2010. For all
19 applications filed prior to such date, the taxpayer may make a one-time
20 election, within the time period prescribed by the Tax Commissioner, to
21 have the changes made in sections 77-5725 and 77-5726 by Laws 2010,
22 LB879, apply to such taxpayer's application, or in the absence of such an
23 election, the provisions of the Nebraska Advantage Act as they existed
24 immediately prior to July 15, 2010, apply to such application.

25 (3) The changes made in sections 77-5707, 77-5715, 77-5719, and
26 77-5725 by Laws 2010, LB918, apply to all applications filed on or after
27 July 15, 2010. For all applications filed prior to such date, the
28 provisions of the Nebraska Advantage Act as they existed immediately
29 prior to such date apply.

30 (4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715,
31 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all

1 applications filed on or after March 8, 2012. For all applications filed
2 prior to such date, the provisions of the Nebraska Advantage Act as they
3 existed immediately prior to such date apply.

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

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

11 (7) The changes made in sections 77-5705, 77-5723, 77-5725, 77-5726,
12 and 77-5727 and in subsections (3), (6), and (7) of section 77-5731 by
13 Laws 2022, LB1150, apply to any agreement entered into under the Nebraska
14 Advantage Act that is still active on January 1, 2023, if the taxpayer
15 makes a one-time election, within the time period prescribed by the Tax
16 Commissioner, to have such changes apply to such taxpayer's agreement. In
17 the absence of such an election, the provisions of such sections and
18 subsections as they existed immediately prior to January 1, 2023, shall
19 apply to such agreement. For each election made under this subsection,
20 the Tax Commissioner shall disclose such election, the identity of the
21 taxpayer, and the location of the taxpayer's project to each municipality
22 in which the project is located. The Tax Commissioner shall make such
23 disclosures within thirty days after the election.

24 (8) The changes made in sections 77-5723 and 77-5727 by this
25 legislative bill apply to any agreement entered into under the Nebraska
26 Advantage Act that is still active on the effective date of this act if
27 the taxpayer makes a one-time election, within the time period prescribed
28 by the Tax Commissioner, to have such changes apply to such taxpayer's
29 agreement. In the absence of such an election, the provisions of such
30 sections as they existed immediately prior to the effective date of this
31 act shall apply to such agreement.

1 Sec. 4. Original sections 77-5723, 77-5727, and 77-5735, Revised
2 Statutes Cumulative Supplement, 2022, are repealed.