

LEGISLATIVE BILL 169

Approved by the Governor May 25, 2001

Introduced by Revenue Committee: Wickersham, 49, Chairperson; Coordsen, 32; Dierks, 40; Hartnett, 45; Janssen, 15; Landis, 46; Raikes, 25; Redfield, 12

AN ACT relating to revenue and taxation; to amend sections 77-27,188, 77-27,188.02, 77-27,192, and 77-27,196.01, Revised Statutes Supplement, 2000; to authorize managed compliance agreements for holders of certain direct payment permits; to eliminate a recapture provision and require minimum investment and employment increases under the Employment Expansion and Investment Incentive Act; to harmonize provisions; to provide applicability; and to repeal the original sections.

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

Section 1. (1) The Tax Commissioner may enter into managed compliance agreements with any holder of a direct payment permit pursuant to sections 77-2705.01 to 77-2705.03 if such holder also makes monthly remittances or payments of sales or use taxes by electronic funds transfer as authorized by section 77-1784.

(2) Such managed compliance agreements shall:

(a) Establish a percentage of purchases, or percentages for categories of purchases, that are presumed to be taxable such that the payment of tax on such percentage or percentages of purchases will result in substantially all of the sales and use tax liability being paid each year;

(b) Establish limits by which the amount of tax paid may vary from the estimated actual tax liability. Such limits may be either a percentage of the estimated actual tax liability or a dollar amount, but the agreed-upon limits must result in an amount between ninety-five percent and one hundred five percent of the estimated actual tax liability; and

(c) Require at least once a year the examination of the reasonableness of the percentage or percentages established in subdivision (a) of this subsection and determine the difference between the amount of sales and use taxes paid and the estimated actual tax liability.

(3) The Tax Commissioner shall adjust the percentage or percentages established in subdivision (2)(a) of this section for future periods as necessary to result in substantially all of the tax liability being paid each year.

(4) If the difference between the amount of sales and use taxes paid and the estimated actual tax liability is within the agreed-upon limits established in subdivision (2)(b) of this section, the percentages or amounts will be considered to have been reasonable for the preceding period, the tax liability shall be considered satisfied for such period, no additional tax payments shall be required for such period, and no refunds shall be allowed for such period. If such difference is not within the agreed-upon limits established in subdivision (2)(b) of this section, the difference shall be remitted to the state or refunded. Interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be due on the underpayment or refund from the date of the last payment for the period until the date the amount is paid or refunded.

Sec. 2. Original section 77-27,188, Revised Statutes Supplement, 2000, is amended to read:

77-27,188. (1)(a) A credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer engaged in a qualifying business as described in section 77-27,189 who increases the employment of such business in this state by two new equivalent Nebraska employees and who makes an increased investment in this state of at least seventy-five thousand dollars during a taxable year.

(b) Any taxpayer who has been allowed a credit under subdivision (1)(a) of this section during the preceding five taxable years, not counting carryovers, shall be allowed a credit for an increase in employment in this state by two new equivalent Nebraska employees.

(2) Except as provided in subsection (3) of this section, the amount of the credit shall be one thousand five hundred dollars for each new equivalent Nebraska employee and one thousand dollars for each seventy-five thousand dollars of increased investment.

(3) For any taxpayer described in subdivision (1)(a) of this section which is also located within the boundaries of an enterprise zone as defined

and designated by the Department of Economic Development pursuant to the Enterprise Zone Act, the amount of the credit shall be:

(a) Four thousand five hundred dollars for each new equivalent Nebraska employee and three thousand dollars for each seventy-five thousand dollars of increased investment if at least fifty percent of the new equivalent Nebraska employees of the taxpayer reside within the boundaries of the enterprise zone; or

(b) Four thousand five hundred dollars for each new equivalent Nebraska employee residing within the boundaries of the enterprise zone, one thousand five hundred dollars for each new equivalent Nebraska employee not residing within the boundaries of the enterprise zone, and one thousand dollars for each seventy-five thousand dollars of increased investment if less than fifty percent of the new equivalent Nebraska employees of the taxpayer reside within the boundaries of the enterprise zone.

The credit allowed to a taxpayer pursuant to this subsection shall not exceed seventy-five thousand dollars in any one tax year.

For purposes of this subdivision, employees residing within the boundaries of an enterprise zone shall be construed to mean employees residing within a county in which an enterprise zone is located when the enterprise zone is not located in a city of the primary or metropolitan class.

For purposes of this subdivision, an employee residing within the enterprise zone shall mean an individual who is domiciled within the enterprise zone for the entire pay period.

~~The failure of a taxpayer to maintain the continuous employment of an employee residing in the enterprise zone or to replace him or her with another employee residing within the enterprise zone for the period of time set out in section 77-27,188.02 shall be deemed a failure to maintain the level of investment and employment that created the credit for purposes of section 77-27,188.02.~~

(4) The credit shall be applied as provided in section 77-27,188.01.

(5) Any taxpayer who has qualified for a credit in the amount set out in subsection (3) of this section may elect to receive either the amount as calculated pursuant to subsection (2) or (3) of this section.

(6) An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of this section if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

Sec. 3. Section 77-27,188.02, Revised Statutes Supplement, 2000, is amended to read:

77-27,188.02. If the taxpayer does not maintain the minimum increases in the level of investment and employment that created the required in section 77-27,188 to create a credit for at least two years after the year for which the credit was first allowed:

(1) The taxpayer shall lose one-third of the amount of unused credits for each year that the taxpayer has not maintained the required level of investment and employment; and

(2) During the subsequent two years, the taxpayer shall repay to the state one-third of the amount of the credit used for each year that the taxpayer has not maintained the required level of investment and employment.

Sec. 4. Section 77-27,192, Revised Statutes Supplement, 2000, is amended to read:

77-27,192. (1)(a) If the taxpayer acquires an existing business, the increases determined in sections 77-27,190 and 77-27,191 shall be computed as though the taxpayer had owned the business during the current taxable year and the three preceding taxable years.

(b) If the taxpayer disposes of an existing business, and the new owner maintains the minimum increases in the levels of investment and employment required in section 77-27,188 to create a credit, the taxpayer shall not be required to make any repayment under section 77-27,188.02 solely because of the disposition of the business.

(2) If the structure of a business is reorganized, the taxpayer shall compute the increases on a consistent basis for all periods.

Sec. 5. Section 77-27,196.01, Revised Statutes Supplement, 2000, is amended to read:

77-27,196.01. (1) The changes made in sections 77-27,188, 77-27,188.02, 77-27,190, 77-27,192, 77-27,193, and 77-27,194 by Laws 1997, LB 886, shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 1998. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 1998, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

(2) The changes made in sections 77-27,187.01 and 77-27,188 by Laws 1999, LB 539, shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 1999. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 1999, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

(3) The changes made in sections 77-27,188, 77-27,188.02, and 77-27,192 by this legislative bill shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 2001. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 2001, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

Sec. 6. Original sections 77-27,188, 77-27,188.02, 77-27,192, and 77-27,196.01, Revised Statutes Supplement, 2000, are repealed.