

## LEGISLATIVE BILL 1124

Approved by the Governor April 19, 1986

Introduced by Wesely, 26; Hefner, 19; Abboud, 12;  
Conway, 17

AN ACT relating to revenue and taxation; to adopt the Employment Expansion and Investment Incentive Act; and to provide an operative date.  
Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Employment Expansion and Investment Incentive Act.

Sec. 2. (1)(a) There shall be allowed a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 to any taxpayer engaged in a qualifying business as described in section 3 of this act who increases the employment of such business in this state by the equivalent of two full-time employees and who makes an investment in this state of at least one hundred 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 the equivalent of two full-time employees.

(2) The amount of the credit shall be five hundred dollars for each new employee and five hundred dollars for each one hundred thousand dollars of investment.

(3) The amount of the credit, including amounts carried over from preceding taxable years, used in any taxable year shall not exceed fifty per cent of the taxpayer's income tax liability to this state. The credit shall be applied after all other nonrefundable credits have been applied and before the application of any refundable credits.

(4) Any amount of the credit that is not used during the taxable year in which such credit was first allowable may be carried over for five immediately succeeding taxable years. A credit carried over shall be used before any additional credit allowed in a current taxable year may be used.

Sec. 3. (1) A qualifying business shall

include a business engaged in the following:

(a) The assembly, fabrication, manufacture, or processing of tangible personal property;

(b) The storage, warehousing, distribution, transportation, or sale of tangible personal property;

(c) The feeding or raising of livestock;

(d) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, or industrial purposes;

(e) The performance of data processing, telecommunication, insurance, or financial services;

(f) The administrative management of any of the activities listed in subdivisions (a) to (e) of this subsection; or

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

(2) A qualifying business shall not include any business in which eighty per cent or more of the total sales of the business are sales of tangible personal property to the ultimate user of the property for use in activities other than the activities listed in subsection (1) of this section.

Sec. 4. (1) A taxpayer shall be deemed to have a new employee when the average number of Nebraska employees during a taxable year exceeds the average number of Nebraska employees during any of the three preceding taxable years.

(2) The average number of Nebraska employees for a taxable year shall be determined by averaging the number of Nebraska employees on (a) the last day of the preceding taxable year, (b) the last day of each calendar quarter within the current taxable year, and (c) the last day of the current taxable year.

(3) If the taxpayer has part-time Nebraska employees or pays overtime, the number of Nebraska employees on a particular day shall be determined by converting the number of hours paid for the pay period including that particular day into a number of equivalent full-time jobs.

(4) The number of hours comprising a full-time job shall be the business hours the taxpayer uses for other purposes such as benefit plans or labor relations. The number of hours comprising a full-time job shall be used for all periods when comparing average employment under the Employment Expansion and Investment Incentive Act.

(5) Qualifying business employees who work within and without this state shall be considered only to the extent they are paid for work performed within

this state.

(6) The hours worked by any person considered an independent contractor or the employee of another taxpayer shall not be used in the computation of any averages under this section.

Sec. 5. (1) A taxpayer shall be deemed to have made an investment in this state if the average investment in this state during the taxable year exceeds the average investment in this state during any of the three preceding taxable years.

(2) The average investment in this state shall be the average of the value of all property used or available for use on the first day of the taxable year and the last day of the taxable year. To determine the value of property owned by the taxpayer, the tax basis before allowance for depreciation shall be used. To determine the value of property rented by the taxpayer, the annual rent of the property shall be multiplied by eight.

(3) Only investment in improvements to real property and tangible personal property that are depreciable under the Internal Revenue Code shall be considered.

(4) Vehicles, planes, or railroad rolling stock shall be excluded in determining the average investment under this section.

Sec. 6. (1) If the taxpayer acquires an existing business, the averages determined in sections 4 and 5 of this act shall be computed as though the taxpayer had owned the business during the current taxable year and the three preceding taxable years.

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

Sec. 7. (1) A taxpayer with more than one business location in this state shall be entitled to a credit equal to the lesser of (a) the sum of the credits computed for the individual business locations or (b) the credit computed based on the total activities of the business in this state.

(2) The credit allowed to related taxpayers shall be the lesser of (a) the sum of the credits computed for each taxpayer or (b) the credit computed based on the total activities of all related taxpayers in this state.

(3) Related taxpayers shall include any corporations that are part of a unitary business under the Nebraska Revenue Act of 1967, any business entities that are not corporations but which would be a part of

the unitary business if they were corporations, any business entities if at least fifty per cent of such entities are owned by the same persons or related taxpayers and family members as defined in the ownership attribution rules of the Internal Revenue Code.

Sec. 8. The credit allowed under the Employment Expansion and Investment Incentive Act shall not be transferable, except in the following situations:

(1) Any credit allowable to a partnership, a subchapter S corporation, or an estate or trust shall be distributed to the partners, shareholders, or beneficiaries in the same manner as income is distributed; and

(2) If a taxpayer operating a qualifying business and allowed a credit under section 2 of this act dies and there is credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of credit may be changed only after obtaining the permission of the Tax Commissioner.

Sec. 9. The Tax Commissioner shall prepare a report identifying the amount of investment in this state and the number of equivalent full-time jobs created by each taxpayer claiming a credit pursuant to the Employment Expansion and Investment Incentive Act. The report shall include the amount of credits claimed in the aggregate. The report shall be issued on or before March 15 of each year beginning with March 15, 1988, for all credits allowed during the previous calendar year.

Sec. 10. (1) Ten years after the effective date of this act a special review panel funded by the Legislature shall be convened to perform a program audit of the Employment Expansion and Investment Incentive Act. The panel shall consist of the Tax Commissioner and two members appointed by the Governor.

(2) The panel shall have three months to review the impact of the Employment Expansion and Investment Incentive Act, including:

(a) An assessment of the types of taxpayers and economic sectors receiving the credit;

(b) An assessment of the nature and level of investment being made;

(c) An assessment of the nature and types of employment being created; and

(d) An economic and fiscal assessment of the

overall impact of the Employment Expansion and Investment Incentive Act on the state's economy.

(3) Based on its findings, the panel shall recommend to the Governor and the Legislature one of the following actions:

(a) Continue the Employment Expansion and Investment Incentive Act in its current statutory form;

(b) Continue the Employment Expansion and Investment Incentive Act with modifications recommended by the panel; or

(c) Repeal the act.

Sec. 11. This act shall become operative for all taxable years beginning or deemed to begin on or after January 1, 1987.