

## LEGISLATIVE BILL 335

Approved by the Governor May 22, 1989

Introduced by Rogers, 41; Korshoj, 16; Morrissey, 1;  
Haberma, 44; Hartnett, 45

AN ACT relating to the Employment Expansion and Investment Incentive Act; to amend sections 77-27,188, 77-27,188.01, 77-27,188.02, and 77-27,191, Revised Statutes Supplement, 1988; to change provisions relating to tax credits pursuant to the act; to provide operative dates; and to repeal the original sections.

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

Section 1. That section 77-27,188, Revised Statutes Supplement, 1988, be amended to read as follows:

77-27,188. (1)(a) ~~There shall be allowed 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 full-time employees and who makes an increased investment in this state of at least one hundred 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 full-time employees.

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

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

Sec. 2. That section 77-27,188.01, Revised Statutes Supplement, 1988, be amended to read as follows:

77-27,188.01. (1) The credit allowed under section 77-27,188 may be used to obtain a refund of sales and use taxes paid or against the income tax liability of the taxpayer.

(2) A claim for the credit may be filed quarterly for refund of the sales and use taxes paid,

either directly or indirectly, after the filing of the income tax return for the taxable year in which the credit was first allowed.

(3) The credit may be used to obtain a refund of sales and use taxes paid before the end of the taxable year for which the credit was allowed, except that the amount refunded under this subsection shall not exceed the amount of the sales and use taxes paid, either directly or indirectly, by the taxpayer on the qualifying investment.

(4) For the purposes of subsections (2) and (3) of this section, the taxpayer shall be deemed to have paid indirectly any sales or use taxes paid by a contractor on tangible personal property incorporated into an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the Nebraska sales and use taxes paid on the materials, or the taxpayer, with the permission of the Tax Commissioner and a certification from the contractor that Nebraska sales and use taxes were paid on all materials, may presume that fifty percent of the cost of the improvement was for materials incorporated on which the tax was paid.

(5) The credit shall be a nonrefundable credit when used against the income tax liability of the taxpayer. The credit shall be applied before any refundable credits are applied. The amount of the credit that may be used in any taxable year shall not exceed fifty percent of the income tax liability of the taxpayer reduced by all other nonrefundable credits except the credits prescribed in section 77-4105.

(6) The credit that is not used against liabilities incurred in the taxable year in which such credit was first allowable may be carried over and used against the liabilities incurred in the five immediately succeeding taxable years. The credits carried over shall be used in the order in which they were first allowed and before any additional credit allowable in a current taxable year may be used.

(7) No claim for refund of sales and use taxes under this section may be filed prior to January 1, 1989.

(8) Credits distributed to a partner, shareholder, or beneficiary under section 77-27,194 may only be used against the income tax liability of the partner, shareholder, or beneficiary receiving the credits.

Sec. 3. That section 77-27,188.02, Revised Statutes Supplement, 1988, be amended to read as

follows:

77-27,188.02. If the taxpayer does not maintain the level of investment and employment that created the credit for at least two years after the year for which the credit was first allowed:

(1) The taxpayer shall not be entitled to any further carryovers of unused credits; and

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

Sec. 4. That section 77-27,191, Revised Statutes Supplement, 1988, be amended to read as follows:

77-27,191. (1) A taxpayer shall be deemed to have made an increased investment in this state if the average investment in this state during the taxable year exceeds to the extent the value of the property used or available for use on the last day of the taxable year exceeds (a) the value of all property used or available for use on the first day of the taxable year or (b) the average investment in this state during each of the three preceding taxable years, whichever is greater.

(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.

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

~~(4)~~ (5) Vehicles, planes, or railroad rolling stock shall be excluded in determining the investment or average investment under this section.

(6) For taxable years 1987 and 1988 only, taxpayers claiming credits under section 77-27,188 shall qualify for credits to the extent allowed either under the provisions of this section as it existed after the passage of Laws 1987, LB 270, or as amended by Legislative Bill 335, Ninety-first Legislature, First Session, 1989.

Sec. 5. Sections 4, 5, and 6 of this act

shall be operative for all taxable years beginning or deemed to begin on or after January 1, 1987, under the Internal Revenue Code of 1986, as amended. The other sections of this act shall be operative for all taxable years beginning or deemed to begin on or after January 1, 1989, under the Internal Revenue Code of 1986, as amended.

Sec. 6. That original section 77-27,191, Revised Statutes Supplement, 1988, is repealed.

Sec. 7. That original sections 77-27,188, 77-27,188.01, and 77-27,188.02, Revised Statutes Supplement, 1988, are repealed.