

LEGISLATIVE BILL 886

Approved by the Governor June 4, 1997

Introduced by Warner, 25; at the request of the Governor

AN ACT relating to revenue and taxation; to amend sections 77-27,187, 77-27,188, 77-27,188.02, 77-27,190, and 77-27,192 to 77-27,195, Reissue Revised Statutes of Nebraska; to change provisions relating to the Employment Expansion and Investment Incentive Act; to define terms; to harmonize provisions; to provide for applicability of the provisions; and to repeal the original sections.

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

Section 1. Section 77-27,187, Reissue Revised Statutes of Nebraska, is amended to read:
77-27,187. Sections 77-27,187 to 77-27,196 and section 2 of this act shall be known and may be cited as the Employment Expansion and Investment Incentive Act.

Sec. 2. For purposes of the Employment Expansion and Investment Incentive Act, unless the context otherwise requires:

(1) Any term has the same meaning as used in the Nebraska Revenue Act of 1967;

(2) Equivalent Nebraska employees means the number of Nebraska employees computed by dividing the total hours paid in a year to Nebraska employees by the product of forty times the number of weeks in a year;

(3) Nebraska employee means an individual who is either a resident or partial-year resident of Nebraska;

(4) Related taxpayers includes any corporations that are part of a unitary business under the Nebraska Revenue Act of 1967 but are not part of the same corporate taxpayer, any business entities that are not corporations but which would be a part of the unitary business if they were corporations, and any business entities if at least fifty percent 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 of 1986, as amended;

(5) Taxpayer means a corporate taxpayer or other person subject to either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under Chapter 77, article 38, or a partnership, limited liability company, S corporation, or joint venture when all of the partners, shareholders, or members are subject to either of such taxes; and

(6) Year means the taxable year of the taxpayer.

Sec. 3. Section 77-27,188, Reissue Revised Statutes of Nebraska, 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 full-time 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 full-time 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 on the date of his or her hiring by the taxpayer and who remains continuously domiciled within the zone during the term of his or her employment for the entire pay period.~~

The failure of a taxpayer to maintain the continuous employment of a resident 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.

Sec. 4. Section 77-27,188.02, Reissue Revised Statutes of Nebraska, is amended to read:

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 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. 5. Section 77-27,190, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,190. (1) A taxpayer shall be deemed to have a new equivalent Nebraska employee when the average number of equivalent Nebraska employees during a taxable year exceeds the average number of equivalent Nebraska employees during each 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) ~~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.~~

(4) ~~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.~~

(5) (3) ~~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. 6. Section 77-27,192, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,192. (1)(a) If the taxpayer acquires an existing business, the averages 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 levels of investment and employment, 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 averages increases on a consistent basis for all periods.

Sec. 7. Section 77-27,193, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,193. (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 a taxpayer 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 calculated excluding any investment acquired in any manner from a related taxpayer or any employees previously employed in this state within the current taxable year or preceding three taxable years by a related taxpayer.

(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, and any business entities if at least fifty percent 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.

(4) For purposes of computing the statewide limitations limitation in subdivisions subdivision (1)(b) and (2)(b) of this section, the type of business being conducted shall be ignored.

(4) For purposes of subsection (1) of this section, two or more parcels of real property which are within the same municipality or county shall constitute one business location if the business activities conducted by the taxpayer on such parcels are interdependent. This subsection shall be applicable to all returns for which, on the effective date of this act, section 77-2786 has not barred a deficiency determination or section 77-2793 has not barred a claim for credit or refund.

Sec. 8. Section 77-27,194, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,194. 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 limited liability company, a subchapter S corporation, or an estate or trust shall may be distributed to the partners, limited liability company members, shareholders, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, estate, or trust shall be liable for any repayment under section 77-27,188.02; and

(2) If a taxpayer operating a qualifying business and allowed a credit under section 77-27,188 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. Section 77-27,195, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,195. (1) 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.

(2) In the report for any year in which a taxpayer located in an enterprise zone designated pursuant to the Enterprise Zone Act claimed a credit pursuant to subsection (3) of section 77-27,188, the Tax Commissioner shall identify (a) the amount of investment made in each enterprise zone by all taxpayers claiming credits, (b) the number of jobs created in each enterprise zone by all taxpayers claiming credits, (c) the number of jobs created in each enterprise zone by all taxpayers claiming credits held by residents of the enterprise zone, and (d) the average wage on an hourly basis or the average annual salary of new jobs created in each enterprise zone by all taxpayers claiming credits.

Sec. 10. 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 this legislative bill 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.

Sec. 11. Original sections 77-27,187, 77-27,188, 77-27,188.02,

77-27,190, and 77-27,192 to 77-27,195, Reissue Revised Statutes of Nebraska, are repealed.