

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 895

Introduced by Janssen, 15; Adams, 24; Burling, 33; Dierks, 40; Gay, 14; Langemeier, 23; Preister, 5; White, 8; at the request of the Governor.

Read first time January 11, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-5701, 77-5703, 77-5708, 77-5712, 77-5714, 77-5723,
3 77-5726, 77-5727, and 77-5731, Revised Statutes
4 Cumulative Supplement, 2006, and sections 77-5715 and
5 77-5725, Revised Statutes Supplement, 2007; to change
6 provisions of certain tax incentive laws; to define
7 and redefine terms; to change fees; to provide for
8 applicability; to harmonize provisions; to provide for
9 applicability; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5701, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 77-5701 Sections 77-5701 to 77-5734 and sections 3, 8, 9,
4 and 15 of this act shall be known and may be cited as the Nebraska
5 Advantage Act.

6 Sec. 2. Section 77-5703, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 77-5703 For purposes of the Nebraska Advantage Act, the
9 definitions found in sections 77-5704 to 77-5721 and sections 3, 8,
10 and 9 of this act shall be used.

11 Sec. 3. County average weekly wage for any calendar year
12 means the most recent average weekly wage paid by all employers in
13 the county as reported by the Department of Labor by October 1 of
14 the year prior to application.

15 Sec. 4. Section 77-5708, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 77-5708 Entitlement period, for a tier 1 or tier 3
18 project, means the year during which the required increases in
19 employment and investment were met or exceeded and each year
20 thereafter until the end of the ninth year following the year of
21 application or the sixth year after the year the required increases
22 were met or exceeded, whichever is sooner. Entitlement period,
23 for a tier 2, tier 4, or tier 5 project, means the year during
24 which the required increases in employment and investment were met
25 or exceeded and each year thereafter until the end of the sixth

1 year after the year the required increases were met or exceeded.
2 Entitlement period, for a tier 6 project, means the year during
3 which the required increases in employment and investment were met
4 or exceeded and each year thereafter until the end of the ninth
5 year after the year the required increases were met or exceeded.

6 Sec. 5. Section 77-5712, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 77-5712 Nebraska average weekly wage for any calendar
9 year means the most recent average weekly wage paid by all
10 employers in all counties in Nebraska as reported by the ~~prior~~
11 October 1 by the Department of Labor by October 1 of the year prior
12 to application.

13 Sec. 6. Section 77-5714, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 77-5714 (1) Number of new employees, for a tier 1, tier
16 2, tier 3, or tier 4 project, means the number of equivalent
17 employees that are employed at the project during a year that are
18 in excess of the number of equivalent employees during the base
19 year, not to exceed the number of equivalent employees employed at
20 the project during a year who are not base-year employees and who
21 are paid wages at a rate equal to at least sixty percent of the
22 Nebraska average weekly wage for the year of application.

23 (2) Number of new employees, for a tier 6 project, means
24 the number of equivalent employees that are employed at the project
25 during a year that are in excess of the number of equivalent

1 employees during the base year, not to exceed the number of
2 equivalent employees employed at the project during a year who are
3 not base-year employees and who are paid at a rate equal to or
4 greater than the tier 6 weekly required compensation for the year
5 of application.

6 (3) Teleworkers working for wages or salaries in Nebraska
7 from their residences for a taxpayer on tasks interdependent with
8 the work performed at the project shall be considered to be
9 employed at the project.

10 Sec. 7. Section 77-5715, Revised Statutes Supplement,
11 2007, is amended to read:

12 77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5
13 project, qualified business means any business engaged in:

14 (a) The conducting of research, development, or testing
15 for scientific, agricultural, animal husbandry, food product, or
16 industrial purposes;

17 (b) The performance of data processing,
18 telecommunication, insurance, or financial services. For purposes
19 of this subdivision, financial services includes only financial
20 services provided by any financial institution subject to tax
21 under Chapter 77, article 38, or any person or entity licensed by
22 the Department of Banking and Finance or the federal Securities
23 and Exchange Commission and telecommunication services includes
24 community antenna television service, Internet access, satellite
25 ground station, data center, call center, or telemarketing;

1 (c) The assembly, fabrication, manufacture, or processing
2 of tangible personal property;

3 (d) The administrative management of the taxpayer's
4 activities, including headquarter facilities relating to such
5 activities or the administrative management of any of the
6 activities of any business entity or entities in which the taxpayer
7 or a group of its shareholders holds any direct or indirect
8 ownership interest of at least ten percent, including headquarter
9 facilities relating to such activities;

10 (e) The storage, warehousing, distribution,
11 transportation, or sale of tangible personal property;

12 (f) The sale of software development services, computer
13 systems design, product testing services, or guidance or
14 surveillance systems design services or the licensing of technology
15 if the taxpayer derives at least seventy-five percent of the sales
16 or revenue attributable to such activities relating to the project
17 from sales or licensing either to customers who are not related
18 persons and located outside the state or to the United States
19 Government; or

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

22 (2) For a tier 1 project, qualified business means any
23 business engaged in:

24 (a) The conducting of research, development, or testing
25 for scientific, agricultural, animal husbandry, food product, or

1 industrial purposes;

2 (b) The assembly, fabrication, manufacture, or processing
3 of tangible personal property;

4 (c) The sale of software development services, computer
5 systems design, product testing services, or guidance or
6 surveillance systems design services or the licensing of technology
7 if the taxpayer derives at least seventy-five percent of the sales
8 or revenue attributable to such activities relating to the project
9 from sales or licensing either to customers who are not related
10 persons and are located outside the state or to the United States
11 Government; or

12 (d) Any combination of activities listed in this
13 subsection.

14 (3) For a tier 6 project, qualified business means any
15 business except a business excluded by subsection (4) of this
16 section.

17 ~~(3)~~ (4) Qualified business does not include any business
18 activity in which eighty percent or more of the total sales are
19 sales to the ultimate consumer of food prepared for immediate
20 consumption or are sales to the ultimate consumer of tangible
21 personal property which is not assembled, fabricated, manufactured,
22 or processed by the taxpayer or used by the purchaser in any of the
23 activities listed in subsection (1) or (2) of this section.

24 Sec. 8. Tier 6 weekly required compensation means two
25 hundred percent of the county average weekly wage for the county

1 in which the project is located or one hundred fifty percent of
2 the state average weekly wage, whichever is higher. If the project
3 is located in more than one county, the higher county average
4 weekly wage shall be used to determine the tier 6 weekly required
5 compensation.

6 Sec. 9. Wages, for a tier 1, tier 2, tier 3, or tier
7 4 project, means the base pay for regular hours worked. The base
8 pay shall not be reduced for deductions, such as participation in
9 benefit plans, and shall not include any payments for overtime,
10 bonuses, or similar payments or the value of benefits provided by
11 the employer. Wages, for a tier 6 project, means compensation.

12 Sec. 10. Section 77-5723, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 77-5723 (1) In order to utilize the incentives set
15 forth in the Nebraska Advantage Act, the taxpayer shall file
16 an application, on a form developed by the Tax Commissioner,
17 requesting an agreement with the Tax Commissioner.

18 (2) The application shall contain:

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

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

24 (c) If more than one location within this state is
25 involved, sufficient documentation to show that the employment and

1 investment at different locations are interdependent parts of the
2 plan. A headquarters shall be presumed to be interdependent with
3 each other location directly controlled by such headquarters. A
4 showing that the parts of the plan would be considered parts of
5 a unitary business for corporate income tax purposes shall not
6 be sufficient to show interdependence for the purposes of this
7 subdivision;

8 (d) A nonrefundable application fee of one thousand
9 dollars for a tier 1 project, two thousand five hundred dollars for
10 a tier 2, tier 3, or tier 5 project, ~~and~~ five thousand dollars for
11 a tier 4 project, and ten thousand dollars for a tier 6 project.

12 The fee shall be credited to the Nebraska Advantage Fund; and

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

17 The application and all supporting information shall be
18 confidential except for the name of the taxpayer, the location of
19 the project, the amounts of increased employment and investment,
20 and the information required to be reported by sections 77-5731 and
21 77-5734.

22 (3) An application must be complete to establish the date
23 of the application. An application shall be considered complete
24 once it contains the items listed in subsection (2) of this
25 section, regardless of the Tax Commissioner's additional needs

1 pertaining to information or clarification in order to approve or
2 not approve the application.

3 (4) Once satisfied that the plan in the application
4 defines a project consistent with the purposes stated in the
5 Nebraska Advantage Act in one or more qualified business activities
6 within this state, that the taxpayer and the plan will qualify for
7 benefits under the act, and that the required levels of employment
8 and investment for the project will be met prior to the end of the
9 fourth year after the year in which the application was submitted
10 for a tier 1, ~~or tier 3,~~ or tier 6 project or the end of the
11 sixth year after the year in which the application was submitted
12 for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall
13 approve the application.

14 (5) After approval, the taxpayer and the Tax Commissioner
15 shall enter into a written agreement. The taxpayer shall agree
16 to complete the project, and the Tax Commissioner, on behalf of
17 the State of Nebraska, shall designate the approved plan of the
18 taxpayer as a project and, in consideration of the taxpayer's
19 agreement, agree to allow the taxpayer to use the incentives
20 contained in the Nebraska Advantage Act. The application, and
21 all supporting documentation, to the extent approved, shall be
22 considered a part of the agreement. The agreement shall state:

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

25 (b) The time period under the act in which the required

1 levels must be met;

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

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

5 (e) A requirement that the company update the Department
6 of Revenue annually on any changes in plans or circumstances which
7 affect the timetable of sales tax refunds as set out in the
8 application. If the company fails to comply with this requirement,
9 the Tax Commissioner may defer any pending sales tax refunds until
10 the company does comply.

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

1 being considered new investment or employment under the Nebraska
2 Advantage Act. The use of property tax exemptions at the project
3 under the Employment and Investment Growth Act shall not preclude
4 investment not eligible for the property tax exemption from being
5 considered new investment under the Nebraska Advantage Act.

6 (7) A taxpayer and the Tax Commissioner may enter into
7 agreements for more than one project and may include more than
8 one project in a single agreement. The projects may be either
9 sequential or concurrent. A project may involve the same location
10 as another project. No new employment or new investment shall be
11 included in more than one project for either the meeting of the
12 employment or investment requirements or the creation of credits.
13 When projects overlap and the plans do not clearly specify, then
14 the taxpayer shall specify in which project the employment or
15 investment belongs.

16 Sec. 11. Section 77-5725, Revised Statutes Supplement,
17 2007, is amended to read:

18 77-5725 (1) Applicants may qualify for benefits under the
19 Nebraska Advantage Act in one of ~~five~~ six tiers:

20 (a) Tier 1, investment in qualified property of at least
21 one million dollars and the hiring of at least ten new employees.
22 There shall be no new project applications for benefits under
23 this tier filed on or after January 1, 2011, without further
24 authorization of the Legislature. All complete project applications
25 filed before January 1, 2011, shall be considered by the Tax

1 Commissioner and approved if the project and taxpayer qualify
2 for benefits. Agreements may be executed with regard to completed
3 project applications filed before January 1, 2011. All project
4 agreements pending, approved, or entered into before such date
5 shall continue in full force and effect;

6 (b) Tier 2, investment in qualified property of at least
7 three million dollars and the hiring of at least thirty new
8 employees;

9 (c) Tier 3, the hiring of at least thirty new employees.
10 There shall be no new project applications for benefits under
11 this tier filed on or after January 1, 2011, without further
12 authorization of the Legislature. All complete project applications
13 filed before January 1, 2011, shall be considered by the Tax
14 Commissioner and approved if the project and taxpayer qualify
15 for benefits. Agreements may be executed with regard to completed
16 project applications filed before January 1, 2011. All project
17 agreements pending, approved, or entered into before such date
18 shall continue in full force and effect;

19 (d) Tier 4, investment in qualified property of at least
20 ten million dollars and the hiring of at least one hundred new
21 employees; and

22 (e) Tier 5, investment in qualified property of at least
23 thirty million dollars. Failure to maintain an average number of
24 equivalent employees as defined in section 77-5727 greater than or
25 equal to the number of equivalent employees in the base year shall

1 result in a partial recapture of benefits; and -

2 (f) Tier 6, investment in qualified property of at least
3 ten million dollars and the hiring of at least seventy-five new
4 employees.

5 (2) When the taxpayer has met the required levels of
6 employment and investment contained in the agreement for a tier 1,
7 tier 2, tier 4, ~~or~~ tier 5, or tier 6 project, the taxpayer shall be
8 entitled to the following incentives:

9 (a) A refund of all sales and use taxes for a tier 2,
10 tier 4, ~~or~~ tier 5, or tier 6 project or a refund of one-half of
11 all sales and use taxes for a tier 1 project paid under the Local
12 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
13 13-319, 13-324, and 13-2813 from the date of the application
14 through the meeting of the required levels of employment and
15 investment for all purchases, including rentals, of:

16 (i) Qualified property used as a part of the project;

17 (ii) Property, excluding motor vehicles, based in this
18 state and used in both this state and another state in connection
19 with the project except when any such property is to be used for
20 fundraising for or for the transportation of an elected official;

21 (iii) Tangible personal property by the owner of the
22 improvement to real estate that is incorporated into real estate as
23 a part of a project; and

24 (iv) Tangible personal property by a contractor or
25 repairperson after appointment as a purchasing agent of the owner

1 of the improvement to real estate. The refund shall be based on
2 fifty percent of the contract price, excluding any land, as the
3 cost of materials subject to the sales and use tax; and

4 (b) A refund of all sales and use taxes for a tier 2,
5 tier 4, ~~or tier 5,~~ or tier 6 project or a refund of one-half of
6 all sales and use taxes for a tier 1 project paid under the Local
7 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
8 13-319, 13-324, and 13-2813 on the types of purchases, including
9 rentals, listed in subdivision (a) of this subsection for such
10 taxes paid during each year of the entitlement period in which
11 the taxpayer is at or above the required levels of employment and
12 investment.

13 (3) Any taxpayer who qualifies for a tier 1, tier 2,
14 tier 3, or tier 4 project shall be entitled to a credit equal to
15 three percent times the average wage of new employees times the
16 number of new employees if the average wage of the new employees
17 equals at least sixty percent of the Nebraska average annual wage
18 for the year of application. The credit shall equal four percent
19 times the average wage of new employees times the number of new
20 employees if the average wage of the new employees equals at least
21 seventy-five percent of the Nebraska average annual wage for the
22 year of application. The credit shall equal five percent times the
23 average wage of new employees times the number of new employees
24 if the average wage of the new employees equals at least one
25 hundred percent of the Nebraska average annual wage for the year of

1 application. The credit shall equal six percent times the average
2 wage of new employees times the number of new employees if the
3 average wage of the new employees equals at least one hundred
4 twenty-five percent of the Nebraska average annual wage for the
5 year of application. For computation of such credit:

6 (a) Average annual wage means the total compensation paid
7 to employees during the year at the project who are not base-year
8 employees and who are paid wages equal to at least sixty percent
9 of the Nebraska average weekly wage for the year of application
10 divided by the number of equivalent employees making up such total
11 compensation;

12 (b) Average wage of new employees means the average
13 annual wage paid to employees during the year at the project who
14 are not base-year employees and who are paid wages equal to at
15 least sixty percent of the Nebraska average weekly wage for the
16 year of application; and

17 (c) Nebraska average annual wage means the Nebraska
18 average weekly wage times fifty-two.

19 (4)(a) Any taxpayer who qualifies for a tier 6 project
20 shall be entitled to a credit equal to ten percent times the
21 average annual compensation of new employees times the number
22 of new employees if the average annual compensation of the new
23 employees equals at least the tier 6 annual required compensation
24 for the year of application.

25 (b) For purposes of this subsection:

1 (i) Average annual compensation means the total
 2 compensation paid to employees during the year at the project who
 3 are not base-year employees and who are paid at a rate equal to or
 4 greater than the tier 6 annual required compensation for the year
 5 of application, excluding any compensation in excess of one million
 6 dollars for any one employee in a year, divided by the number of
 7 equivalent employees making up such total compensation; and

8 (ii) Tier 6 annual required compensation means the tier 6
 9 weekly required compensation times fifty-two.

10 ~~(4)~~ (5) Any taxpayer who has met the required levels of
 11 employment and investment for a tier 2 or tier 4 project shall
 12 receive a credit equal to ten percent of the investment made in
 13 qualified property at the project. Any taxpayer who has met the
 14 required levels of investment and employment for a tier 1 project
 15 shall receive a credit equal to three percent of the investment
 16 made in qualified property at the project. Any taxpayer who has
 17 met the required levels of investment and employment for a tier
 18 6 project shall receive a credit equal to fifteen percent of the
 19 investment made in qualified property at the project.

20 ~~(5)~~ (6) The credits prescribed in subsections ~~(3)~~ and
 21 ~~(4)~~ (3), (4), and (5) of this section shall be allowable for
 22 compensation paid and investments made during each year of the
 23 entitlement period that the taxpayer is at or above the required
 24 levels of employment and investment.

25 ~~(6)~~ (7) The credit prescribed in subsection ~~(4)~~ (5) of

1 this section shall also be allowable during the first year of
2 the entitlement period for investment in qualified property at the
3 project after the date of the application and before the required
4 levels of employment and investment were met.

5 ~~(7)(a)~~ (8)(a) A taxpayer who has met the required levels
6 of employment and investment for a tier 4 or tier 6 project shall
7 receive the incentive provided in this subsection. Such investment
8 and hiring of new employees shall be considered a required level of
9 investment and employment for this subsection and for the recapture
10 of benefits under this subsection only.

11 (b) The following property used in connection with such
12 project or projects and acquired by the taxpayer, whether by
13 lease or purchase, after the date the application was filed shall
14 constitute separate classes of personal property:

15 (i) Turbine-powered aircraft, including turboprop,
16 turbojet, and turbofan aircraft, except when any such aircraft is
17 used for fundraising for or for the transportation of an elected
18 official;

19 (ii) Computer systems, made up of equipment that is
20 interconnected in order to enable the acquisition, storage,
21 manipulation, management, movement, control, display, transmission,
22 or reception of data involving computer software and hardware, used
23 for business information processing which require environmental
24 controls of temperature and power and which are capable of
25 simultaneously supporting more than one transaction and more than

1 one user. A computer system includes peripheral components which
2 require environmental controls of temperature and power connected
3 to such computer systems. Peripheral components shall be limited to
4 additional memory units, tape drives, disk drives, power supplies,
5 cooling units, data switches, and communication controllers;

6 (iii) Depreciable personal property used for a
7 distribution facility, including, but not limited to, storage
8 racks, conveyor mechanisms, forklifts, and other property used to
9 store or move products; ~~and~~

10 (iv) Personal property which is business equipment
11 located in a single project if the business equipment is involved
12 directly in the manufacture or processing of agricultural products;
13 and -

14 (v) For a tier 6 project, any other personal property
15 located at the project.

16 (c) Such property shall be eligible for exemption from
17 the tax on personal property from the first January 1 following the
18 date of acquisition for property in subdivision ~~(7)(b)(i)~~ (8)(b)(i)
19 of this section, or from the first January 1 following the end
20 of the year during which the required levels were exceeded for
21 property in subdivisions ~~(7)(b)(ii), (iii), and (iv)~~ (8)(b)(ii),
22 (iii), (iv), and (v) of this section, through the ninth December
23 31 after the first year any property included in subdivisions
24 ~~(7)(b)(ii), (iii), and (iv)~~ (8)(b)(ii), (iii), (iv), and (v) of
25 this section qualifies for the exemption. In order to receive the

1 property tax exemptions allowed by ~~subdivisions (7)(b)(i), (ii),~~
2 ~~(iii), and (iv)~~ subdivision (8)(b) of this section, the taxpayer
3 shall annually file a claim for exemption with the Tax Commissioner
4 on or before May 1. The form and supporting schedules shall be
5 prescribed by the Tax Commissioner and shall list all property
6 for which exemption is being sought under this section. A separate
7 claim for exemption must be filed for each project and each county
8 in which property is claimed to be exempt. A copy of this form
9 must also be filed with the county assessor in each county in
10 which the applicant is requesting exemption. The Tax Commissioner
11 shall determine the eligibility of each item listed for exemption
12 and, on or before August 10, certify such to the taxpayer and to
13 the affected county assessor. In determining the eligibility of
14 items of personal property for exemption, the Tax Commissioner is
15 limited to the question of whether the property claimed as exempt
16 by the taxpayer falls within the classes of property described in
17 subdivision ~~(7)(b)~~ (8)(b) of this section. The determination of
18 whether a taxpayer is eligible to obtain exemption for personal
19 property based on meeting the required levels of investment and
20 employment is the responsibility of the Tax Commissioner.

21 ~~(8)~~ (9) The investment thresholds in this section for
22 a particular year of application shall be adjusted by the method
23 provided in this subsection. Beginning October 1, 2006, and each
24 October 1 thereafter, the Producer Price Index for all commodities,
25 published by the United States Department of Labor, Bureau of Labor

1 Statistics, for the most recent available period shall be divided
2 by the Producer Price Index for the first quarter of 2006 and
3 the result multiplied by the applicable investment threshold. The
4 investment thresholds shall be adjusted for cumulative inflation
5 since 2006. If the resulting amount is not a multiple of one
6 million dollars, the amount shall be rounded to the next lowest
7 one million dollars. The investment thresholds established by this
8 subsection apply for purposes of project qualifications for all
9 applications filed on or after January 1 of the following year
10 for all years of the project. Adjustments do not apply to projects
11 after the year of application.

12 Sec. 12. Section 77-5726, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 77-5726 (1)(a) The credits prescribed in section 77-5725
15 shall be established by filing the forms required by the Tax
16 Commissioner with the income tax return for the year. The credits
17 may be used and shall be applied in the order in which they
18 were first allowed. The credits may be used after any other
19 nonrefundable credits to reduce the taxpayer's income tax liability
20 imposed by sections 77-2714 to 77-27,135. Any decision on how part
21 of the credit is applied shall not limit how the remaining credit
22 could be applied under this section.

23 (b) The taxpayer may use the credit provided in
24 ~~subsection (3)~~ subsections (3) and (4) of section 77-5725 to
25 reduce the taxpayer's income tax withholding employer or payor

1 tax liability under section 77-2756 or 77-2757 to the extent such
2 liability is attributable to the number of new employees at the
3 project. To the extent of the credit used, such withholding shall
4 not constitute public funds or state tax revenue and shall not
5 constitute a trust fund or be owned by the state. The use by the
6 taxpayer of the credit shall not change the amount that otherwise
7 would be reported by the taxpayer to the employee under section
8 77-2754 as income tax withheld and shall not reduce the amount that
9 otherwise would be allowed by the state as a refundable credit
10 on an employee's income tax return as income tax withheld under
11 section 77-2755.

12 The amount of credits used against income tax withholding
13 shall not exceed the withholding attributable to new employees at
14 the project. If the amount of credit used by the taxpayer against
15 income tax withholding exceeds this amount, the excess withholding
16 shall be returned to the Department of Revenue in the manner
17 provided in section 77-2756, such excess amount returned shall be
18 considered unused, and the amount of unused credits may be used
19 as otherwise permitted in this section or shall carry over to the
20 extent authorized in subdivision (1)(d) of this section.

21 (c) Credits may be used to obtain a refund of sales and
22 use taxes under the Local Option Revenue Act, the Nebraska Revenue
23 Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not
24 otherwise refundable that are paid on purchases, including rentals,
25 for use at the project for a tier 1, tier 2, tier 3, or tier 4

1 project or for use within this state for a tier 6 project.

2 (d) The credits earned for a tier 6 project may be used
3 to obtain a payment from the state equal to the ad valorem tax paid
4 to political subdivisions of this state that became due after the
5 year the required levels of employment and investment were met and
6 before the end of the carryover period, on real property that is
7 located in this state. Payments shall not be allowed for any taxes
8 paid on real property for which the taxes are divided under section
9 18-2147 or 58-507.

10 ~~(d)~~ (e) Credits may be carried over until fully utilized,
11 except that such credits may not be carried over more than nine
12 years after the year of application for a tier 1 or tier 3 project,
13 or fourteen years after the year of application for a tier 2
14 or tier 4 project, or more than one year past the end of the
15 entitlement period for a tier 6 project.

16 (2)(a) No refund claims shall be filed until after the
17 required levels of employment and investment have been met.

18 (b) Refund claims shall be filed no more than once each
19 quarter for refunds under the Nebraska Advantage Act, except that
20 any claim for a refund in excess of twenty-five thousand dollars
21 may be filed at any time.

22 (c) Any refund claim for sales and use taxes on materials
23 incorporated into real estate as a part of the project shall be
24 filed by and the refund paid to the owner of the improvement
25 to real estate. A refund claim for such materials purchased

1 by a purchasing agent shall include a copy of the purchasing
2 agent appointment, the contract price, and a certification by
3 the contractor or repairperson of the percentage of the materials
4 incorporated into the project on which sales and use taxes were
5 paid to Nebraska after appointment as purchasing agent.

6 (d) All refund claims shall be filed, processed, and
7 allowed as any other claim under section 77-2708, except that
8 the amounts allowed to be refunded under the Nebraska Advantage
9 Act shall be deemed to be overpayments and shall be refunded
10 notwithstanding any limitation in subdivision (2)(a) of section
11 77-2708. The refund may be allowed if the claim is filed within
12 three calendar years from the end of the year the required levels
13 of employment and investment are met or within the period set forth
14 in section 77-2708.

15 (e) If a claim for a refund of sales and use taxes
16 under the Local Option Revenue Act or sections 13-319, 13-324, and
17 13-2813 of more than twenty-five thousand dollars is filed by June
18 15 of a given year, the refund shall be made on or after November
19 15 of the same year. If such a claim is filed on or after June
20 16 of a given year, the refund shall not be made until on or
21 after November 15 of the following year. The Tax Commissioner shall
22 notify the affected city, village, county, or municipal county of
23 the amount of refund claims of sales and use taxes under the Local
24 Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are
25 in excess of twenty-five thousand dollars on or before July 1 of

1 the year before the claims will be paid under this section.

2 (f) Interest shall not be allowed on any ~~sales and use~~
3 taxes refunded under the Nebraska Advantage Act.

4 (3) The appointment of purchasing agents shall be
5 recognized for the purpose of changing the status of a contractor
6 or repairperson as the ultimate consumer of tangible personal
7 property purchased after the date of the appointment which is
8 physically incorporated into the project and becomes the property
9 of the owner of the improvement to real estate. The purchasing
10 agent shall be jointly liable for the payment of the sales and use
11 tax on the purchases with the owner of the improvement to real
12 estate.

13 (4) A determination that a taxpayer is not engaged in a
14 qualified business or has failed to meet or maintain the required
15 levels of employment or investment for incentives, exemptions, or
16 recapture may be protested to the Tax Commissioner within thirty
17 days after the written determination by the Department of Revenue.
18 The Tax Commissioner shall issue a written order resolving such
19 protests. The determination of the Tax Commissioner may be appealed
20 to the district court of Lancaster County within thirty days after
21 the issuance of the order.

22 Sec. 13. Section 77-5727, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 77-5727 (1)(a) If the taxpayer fails either to meet the
25 required levels of employment or investment for the applicable

1 project by the end of the fourth year after the end of the year
2 the application was submitted for a tier 1, ~~or tier 3,~~ or tier
3 6 project or by the end of the sixth year after the end of the
4 year the application was submitted for a tier 2, tier 4, or tier
5 5 project or to utilize such project in a qualified business at
6 employment and investment levels at or above those required in the
7 agreement for the entire entitlement period, all or a portion of
8 the incentives set forth in the Nebraska Advantage Act shall be
9 recaptured or disallowed.

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

14 (2) In the case of a taxpayer who has failed to maintain
15 the project at the required levels of employment or investment
16 for the entire entitlement period, any reduction in the personal
17 property tax, any refunds in tax allowed under subsection (2)
18 of section 77-5725, and any refunds or reduction in tax allowed
19 because of the use of a credit allowed under ~~subsection (7)~~ ~~of~~
20 section 77-5725 shall be partially recaptured from either the
21 taxpayer or the owner of the improvement to real estate and any
22 carryovers of credits shall be partially disallowed. One-seventh
23 of the refunds, one-seventh of the reduction in personal property
24 tax, and one-seventh of the credits used shall be recaptured and
25 one-seventh of the remaining carryovers and the last remaining year

1 of personal property tax exemption shall be disallowed for each
2 year the taxpayer did not maintain such project at or above the
3 required levels of employment or investment.

4 (3) In the case of a taxpayer qualified under tier
5 5 who has failed to maintain the average number of equivalent
6 employees at the project at the end of the six years following
7 the year the taxpayer attained the required amount of investment,
8 any refunds in tax allowed under subdivision (2)(a) of section
9 77-5725 shall be partially recaptured from the taxpayer. The amount
10 of recapture shall be the total amount of refunds allowed for
11 all years times the reduction in the average number of equivalent
12 employees employed at the end of the entitlement period from the
13 number of equivalent employees employed in the base year divided
14 by the number of equivalent employees employed in the base year.
15 For purposes of this subsection, the average number of equivalent
16 employees shall be calculated at the end of the entitlement period
17 by adding the number of equivalent employees in the year the
18 taxpayer attains the required level of investment and each of the
19 next following six years and dividing the result by seven.

20 (4) If the taxpayer receives any refunds or reduction
21 in tax to which the taxpayer was not entitled or which were in
22 excess of the amount to which the taxpayer was entitled, the refund
23 or reduction in tax shall be recaptured separate from any other
24 recapture otherwise required by this section. Any amount recaptured
25 under this subsection shall be excluded from the amounts subject to

1 recapture under other subsections of this section.

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

9 (6) Any personal property tax that would have been due
10 except for the exemption allowed under the Nebraska Advantage
11 Act, to the extent it becomes due under this section, shall be
12 considered delinquent and shall be immediately due and payable to
13 the county or counties in which the property was located when
14 exempted. All amounts received by a county under this section shall
15 be allocated to each taxing unit levying taxes on tangible personal
16 property in the county in the same proportion that the levy on
17 tangible personal property of such taxing unit bears to the total
18 levy of all of such taxing units.

19 (7) Notwithstanding any other limitations contained in
20 the laws of this state, collection of any taxes deemed to be
21 underpayments by this section shall be allowed for a period of
22 three years after the end of the entitlement period.

23 (8) Any amounts due under this section shall be
24 recaptured notwithstanding other allowable credits and shall not be
25 subsequently refunded under any provision of the Nebraska Advantage

1 Act unless the recapture was in error.

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

5 Sec. 14. Section 77-5731, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 77-5731 (1) The Tax Commissioner shall submit an annual
8 report to the Legislature no later than July 15 of each year.

9 (2) The report shall list (a) the agreements which have
10 been signed during the previous calendar year, (b) the agreements
11 which are still in effect, (c) the identity of each taxpayer who is
12 party to an agreement, and (d) the location of each project.

13 (3) The report shall also state, for taxpayers who are
14 parties to agreements, by industry group (a) the specific incentive
15 options applied for under the Nebraska Advantage Act, (b) the
16 refunds allowed on the investment, (c) the credits earned, (d) the
17 credits used to reduce the corporate income tax and the credits
18 used to reduce the individual income tax, (e) the credits used
19 to obtain sales and use tax refunds, (f) the credits used against
20 withholding liability, (g) the number of jobs created under the
21 act, (h) the total number of employees employed in the state on the
22 last day of the calendar quarter prior to the application date and
23 the total number of employees employed in the state on subsequent
24 reporting dates, (i) the expansion of capital investment, (j) the
25 estimated wage levels of jobs created under the act subsequent to

1 the application date, (k) the total number of qualified applicants,
2 (l) the projected future state revenue gains and losses, (m) the
3 sales tax refunds owed, (n) the credits outstanding under the act,
4 ~~and~~ (o) the value of personal property exempted by class in each
5 county under the act, (p) the value of property for which payments
6 equal to property taxes paid were allowed in each county, and (q)
7 the total amount of the payments.

8 (4) In estimating the projected future state revenue
9 gains and losses, the report shall detail the methodology utilized,
10 state the economic multipliers and industry multipliers used to
11 determine the amount of economic growth and positive tax revenue,
12 describe the analysis used to determine the percentage of new jobs
13 attributable to the Nebraska Advantage Act assumption, and identify
14 limitations that are inherent in the analysis method.

15 (5) The report shall provide an explanation of the audit
16 and review processes of the Department of Revenue in approving and
17 rejecting applications or the grant of incentives and in enforcing
18 incentive recapture. The report shall also specify the median
19 period of time between the date of application and the date the
20 agreement is executed for all agreements executed by December 31 of
21 the prior year.

22 (6) The report shall provide information on
23 project-specific total incentives used every two years for
24 each approved project. The report shall disclose (a) the identity
25 of the taxpayer, (b) the location of the project, and (c) the total

1 credits used and refunds approved during the immediately preceding
2 two years expressed as a single, aggregated total. The incentive
3 information required to be reported under this subsection shall not
4 be reported for the first year the taxpayer attains the required
5 employment and investment thresholds. The information on first-year
6 incentives used shall be combined with and reported as part of the
7 second year. Thereafter, the information on incentives used for
8 succeeding years shall be reported for each project every two years
9 containing information on two years of credits used and refunds
10 approved. The incentives used shall include incentives which have
11 been approved by the department, but not necessarily received,
12 during the previous two calendar years.

13 (7) The report shall include an executive summary which
14 shows aggregate information for all projects for which the
15 information on incentives used in subsection (6) of this section
16 is reported as follows: (a) The total incentives used by all
17 taxpayers for projects detailed in subsection (6) of this section
18 during the previous two years; (b) the number of projects; (c)
19 the total number of employees of these taxpayers employed in
20 the state on the last day of the calendar quarter prior to the
21 application date, the new jobs at the project for which credits
22 have been granted, and the total number of employees employed in
23 the state by these taxpayers on subsequent reporting dates; (d) the
24 average compensation paid employees in the state in the year of
25 application and for the new jobs at the project; and (e) the total

1 investment for which incentives were granted. The executive summary
2 shall summarize the number of states which grant investment tax
3 credits, job tax credits, sales and use tax refunds for qualified
4 investment, and personal property tax exemptions and the investment
5 and employment requirements under which they may be granted.

6 (8) No information shall be provided in the report that
7 is protected by state or federal confidentiality laws.

8 Sec. 15. The changes made in sections 77-5703, 77-5708,
9 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and
10 77-5731 by this legislative bill and sections 3, 8, and 9 of this
11 act apply to all applications filed on and after the effective
12 date of this act. For all applications filed prior to such date,
13 the provisions of the Nebraska Advantage Act as they existed
14 immediately prior to such date apply.

15 Sec. 16. Original sections 77-5701, 77-5703, 77-5708,
16 77-5712, 77-5714, 77-5723, 77-5726, 77-5727, and 77-5731, Revised
17 Statutes Cumulative Supplement, 2006, and sections 77-5715 and
18 77-5725, Revised Statutes Supplement, 2007, are repealed.