

E & R AMENDMENTS TO LB 539

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 "Section 1. Section 77-27,187.01, Revised Statutes
4 Supplement, 1998, is amended to read:

5 77-27,187.01. For purposes of the Employment Expansion
6 and Investment Incentive Act, unless the context otherwise
7 requires:

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

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

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

16 (4) Qualified employee leasing company means a company
17 which places all employees of a client-lessee on its payroll and
18 leases such employees to the client-lessee on an ongoing basis for
19 a fee and, by written agreement between the employee leasing
20 company and a client-lessee, grants to the client-lessee input into
21 the hiring and firing of the employees leased to the client-lessee;

22 (5) Related taxpayers includes any corporations that are
23 part of a unitary business under the Nebraska Revenue Act of 1967
24 but are not part of the same corporate taxpayer, any business

1 entities that are not corporations but which would be a part of the
2 unitary business if they were corporations, and any business
3 entities if at least fifty percent of such entities are owned by
4 the same persons or related taxpayers and family members as defined
5 in the ownership attribution rules of the Internal Revenue Code of
6 1986, as amended;

7 ~~(5)~~ (6) Taxpayer means a corporate taxpayer or other
8 person subject to either an income tax imposed by the Nebraska
9 Revenue Act of 1967 or a franchise tax under Chapter 77, article
10 38, or exempt from such taxes under section 521 of the Internal
11 Revenue Code of 1986, as amended, or a partnership, limited
12 liability company, S corporation, or joint venture when all of the
13 partners, shareholders, or members are subject to or exempt from
14 such taxes; and

15 ~~(6)~~ (7) Year means the taxable year of the taxpayer.

16 Sec. 2. Section 77-27,188, Revised Statutes Supplement,
17 1998, is amended to read:

18 77-27,188. (1)(a) A credit against the taxes imposed by
19 the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer
20 engaged in a qualifying business as described in section 77-27,189
21 who increases the employment of such business in this state by two
22 new equivalent Nebraska employees and who makes an increased
23 investment in this state of at least seventy-five thousand dollars
24 during a taxable year.

25 (b) Any taxpayer who has been allowed a credit under
26 subdivision (1)(a) of this section during the preceding five
27 taxable years, not counting carryovers, shall be allowed a credit

1 for an increase in employment in this state by two new equivalent
2 Nebraska employees.

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

7 (3) For any taxpayer described in subdivision (1)(a) of
8 this section which is also located within the boundaries of an
9 enterprise zone as defined and designated by the Department of
10 Economic Development pursuant to the Enterprise Zone Act, the
11 amount of the credit shall be:

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

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

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

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

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

9 The failure of a taxpayer to maintain the continuous
10 employment of an employee residing in the enterprise zone or to
11 replace him or her with another employee residing within the
12 enterprise zone for the period of time set out in section
13 77-27,188.02 shall be deemed a failure to maintain the level of
14 investment and employment that created the credit for purposes of
15 section 77-27,188.02.

16 (4) The credit shall be applied as provided in section
17 77-27,188.01.

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

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

1 Sec. 3. Section 77-27,196.01, Revised Statutes
2 Supplement, 1998, is amended to read:

3 77-27,196.01. (1) The changes made in sections
4 77-27,188, 77-27,188.02, 77-27,190, 77-27,192, 77-27,193, and
5 77-27,194 by Laws 1997, LB 886, shall become operative for all
6 credits earned in tax years beginning, or deemed to begin, on and
7 after January 1, 1998. For all credits earned in tax years
8 beginning, or deemed to begin, prior to January 1, 1998, the
9 provisions of the Employment Expansion and Investment Incentive Act
10 as they existed immediately prior to such date shall apply.

11 (2) The changes made in sections 77-27,187.01 and
12 77-27,188 by this legislative bill shall become operative for all
13 credits earned in tax years beginning, or deemed to begin, on and
14 after January 1, 1999. For all credits earned in tax years
15 beginning, or deemed to begin, prior to January 1, 1999, the
16 provisions of the Employment Expansion and Investment Incentive Act
17 as they existed immediately prior to such date shall apply.

18 Sec. 4. Section 77-4101, Revised Statutes Supplement,
19 1998, is amended to read:

20 77-4101. Sections 77-4101 to 77-4112 and section 6 of
21 this act shall be known and may be cited as the Employment and
22 Investment Growth Act.

23 Sec. 5. Section 77-4103, Revised Statutes Supplement,
24 1998, is amended to read:

25 77-4103. For purposes of the Employment and Investment
26 Growth Act, unless the context otherwise requires:

27 (1) Any term shall have the same meaning as used in

1 Chapter 77, article 27;

2 (2) Base year shall mean the year immediately preceding
3 the year during which the application was submitted;

4 (3) Base-year employee shall mean any individual who was
5 employed in Nebraska and subject to the Nebraska income tax on
6 compensation received from the taxpayer or its predecessors during
7 the base year and who is employed at the project;

8 (4) Compensation shall mean the wages and other payments
9 subject to withholding for federal income tax purposes;

10 (5) Entitlement period shall mean the year during which
11 the required increases in employment and investment were met or
12 exceeded, and the next six years;

13 (6) Equivalent employees shall mean the number of
14 employees computed by dividing the total hours paid in a year by
15 the product of forty times the number of weeks in a year;

16 (7) Investment shall mean the value of qualified property
17 incorporated into or used at the project. For qualified property
18 owned by the taxpayer, the value shall be the original cost of the
19 property. For qualified property rented by the taxpayer, the
20 average net annual rent shall be multiplied by the number of years
21 of the lease for which the taxpayer was originally bound, not to
22 exceed ten years or the end of the third year after the entitlement
23 period, whichever is earlier. The rental of land included in and
24 incidental to the leasing of a building shall not be excluded from
25 the computation;

26 (8) Motor vehicle shall mean any motor vehicle, trailer,
27 or semitrailer as defined in section 60-301 and subject to

1 licensing for operation on the highways;

2 (9) Nebraska employee shall mean an individual who is
3 either a resident or partial-year resident of Nebraska;

4 (10) Number of new employees shall mean the excess of the
5 number of equivalent employees employed at the project during a
6 year over the number of equivalent employees during the base year;

7 (11) Qualified business shall mean any business engaged
8 in the activities listed in subdivisions (b)(i) through (v) of this
9 subdivision or in the storage, warehousing, distribution,
10 transportation, or sale of tangible personal property. Qualified
11 business shall not include any business activity in which eighty
12 percent or more of the total sales are sales to the ultimate
13 consumer of food prepared for immediate consumption or are sales to
14 the ultimate consumer of tangible personal property which is not
15 (a) assembled, fabricated, manufactured, or processed by the
16 taxpayer or (b) used by the purchaser in any of the following
17 activities:

18 (i) The conducting of research, development, or testing
19 for scientific, agricultural, animal husbandry, food product, or
20 industrial purposes;

21 (ii) The performance of data processing,
22 telecommunication, insurance, or financial services. Financial
23 services for purposes of this subdivision shall only include
24 financial services provided by any financial institution subject to
25 tax under Chapter 77, article 38, or any person or entity licensed
26 by the Department of Banking and Finance or the Securities and
27 Exchange Commission;

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

3 (iv) The administrative management of any activities,
4 including headquarter facilities relating to such activities; or

5 (v) Any combination of the activities listed in this
6 subdivision;

7 (12) Qualified employee leasing company shall mean a
8 company which places all employees of a client-lessee on its
9 payroll and leases such employees to the client-lessee on an
10 ongoing basis for a fee and, by written agreement between the
11 employee leasing company and a client-lessee, grants to the
12 client-lessee input into the hiring and firing of the employees
13 leased to the client-lessee;

14 (13) Qualified property shall mean any tangible property
15 of a type subject to depreciation, amortization, or other recovery
16 under the Internal Revenue Code of 1986, or the components of such
17 property, that will be located and used at the project. Qualified
18 property shall not include (a) aircraft, barges, motor vehicles,
19 railroad rolling stock, or watercraft or (b) property that is
20 rented by the taxpayer qualifying under the Employment and
21 Investment Growth Act to another person;

22 ~~(13)~~ (14) Related persons shall mean any corporations,
23 partnerships, limited liability companies, or joint ventures which
24 are or would otherwise be members of the same unitary group, if
25 incorporated, or any persons who are considered to be related
26 persons under either section 267(B) and (C) or section 707(B) of
27 the Internal Revenue Code of 1986;

1 ~~(14)~~ (15) Taxpayer shall mean any person subject to the
2 sales and use taxes and either an income tax imposed by the
3 Nebraska Revenue Act of 1967 or a franchise tax under sections
4 77-3801 to 77-3807, any corporation, partnership, limited liability
5 company, or joint venture that is or would otherwise be a member of
6 the same unitary group, if incorporated, which is, or whose
7 partners, members, or owners are, subject to such taxes, and any
8 other partnership, limited liability company, S corporation, or
9 joint venture when the partners, shareholders, or members are
10 subject to such taxes; and

11 ~~(15)~~ (16) Year shall mean the taxable year of the
12 taxpayer.

13 The changes made in this section by Laws 1997, LB 264,
14 apply to investments made or employment on or after January 1,
15 1997, and for all agreements in effect on or after January 1, 1997.

16 Sec. 6. An employee of a qualified employee leasing
17 company shall be considered to be an employee of the client-lessee
18 for purposes of the Employment and Investment Growth Act if the
19 employee performs services for the client-lessee. A qualified
20 employee leasing company shall provide the Department of Revenue
21 access to the records of employees leased to the client-lessee.

22 Sec. 7. Section 77-4112, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-4112. (1) The changes made in sections 77-4103 to
25 77-4105 and 77-4107 by Laws 1988, LB 1234, shall become operative
26 for all applications filed on and after January 1, 1988. For all
27 applications filed prior to January 1, 1988, the provisions of the

AM7125
LB 539
NPN-04-15

AM7125
LB 539
NPN-04-15

1 Employment and Investment Growth Act as they existed immediately
2 prior to such date shall apply.

3 (2) Section 77-4113 and the changes made in section
4 77-4104 by Laws 1996, LB 1290, shall become operative for all
5 applications filed on or after May 1, 1996.

6 (3) The changes made in sections 77-4101 and 77-4103 by
7 this legislative bill and section 6 of this act shall become
8 operative for any taxpayer with an agreement in effect on or after
9 January 1, 1999. Such changes and section 6 of this act shall be
10 applied on a consistent basis for determining benefits for tax
11 years beginning, or deemed to begin, on and after January 1, 1999.
12 For all benefit determinations in tax years beginning, or deemed to
13 begin, prior to January 1, 1999, the provisions of the Employment
14 and Investment Growth Act as they existed immediately prior to such
15 date shall apply.

16 Sec. 8. Original section 77-4112, Reissue Revised
17 Statutes of Nebraska, and sections 77-27,187.01, 77-27,188,
18 77-27,196.01, 77-4101, and 77-4103, Revised Statutes Supplement,
19 1998, are repealed."

20 2. On page 1, line 1, after "amend" insert "section
21 77-4112, Reissue Revised Statutes of Nebraska, and"; in line 2
22 after "77-27,188," insert "77-27,196.01,"; and strike beginning
23 with the second "to" in line 5 through the semicolon in line 6.