



Ninety-Ninth Legislature - Second Session - 2006
Committee Statement
LB 1003

Hearing Date: January 19, 2006
Committee On: Revenue

Introducer(s): (Landis)
Title: Change a motor fuel tax exemption relating to Indian reservations

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

8	Yes	Senators Baker, Connealy, Cornett, Janssen, Landis, Preister, Raikes and Redfield
0	No	
0	Present, not voting	
0	Absent	

Proponents:

Senator David Landis
Mary Jane Egr Edson, State Tax
Commissioner
Judi M. Gaiashkibos

Representing:

Introducer

Nebraska Department of Revenue
Commission on Indian Affairs

Opponents:

None

Representing:

Neutral:

None

Representing:

Summary of purpose and/or changes:

LB 1003 would amend section 66-489, dealing with motor vehicle fuel tax returns, subsection (3) which lists exemptions from motor vehicle fuel taxes. The bill would limit the exemption available to Native Americans residing on a reservation to situations where there is no joint motor fuels tax agreement with the Tribe. Stated another way, Native Americans residing on the reservation would be subject to motor vehicle fuel taxes as provided in a motor vehicle fuel tax agreement between the Tribe and the state.

Explanation of amendments, if any:

The Committee amendments inserted the provisions of six other bills into LB 1003. The other bills were 1) LB 807, to update references to the Internal Revenue Code that lie outside the income tax statutes, 2) LB 811, to strike a requirement that liquor tax returns be notarized, 3) LB 937, to redefine some terms and clarify provisions of the Nebraska Advantage Microenterprise Tax Credit Act, 4) LB 1045, to unify three definitions of “distressed areas” for purposes of three rural development tax credit or grant programs, 5) LB 888, to clarify and improve the administration of the Nebraska Advantage Act, and 6) LB 836, to change the recapture provisions for tier 5 qualifiers under the Nebraska Advantage Act that fail to maintain the same number of jobs as in the base year.

A section by section explanation together with the source of the section follows:

Sections 1, 16, and 17 would amend the definitions of “distressed area” in three economic development tax credit or grant acts so that the definitions for each act would be the same. Under the Committee amendment, these three acts would define the locations where the business must be located to receive benefits as a city or village, county, unincorporated area of a county, or census tract that has 1) an unemployment rate that exceeds the state average, 2) a per capita income below the state average, or 3) a population loss between the two most recent federal censuses. Section 1 would amend section 13-203 of the Community Development Assistance Act to adopt this definition. Section 16 would amend section 77-5903 to adopt this definition for the Nebraska Advantage Microenterprise Tax Credit Act. Section 17 would amend section 81-12,127 to adopt this definition for the Building Entrepreneurial Communities Grant Program. **(LB 1045.)**

Section 2 would amend section 49-801.01 to state that references to the Internal Revenue Code mean the Code as it exists on the effective date of this bill instead of March 10, 2004. **(LB 807.)**

Sections 3 & 4 would amend two sections of the liquor tax statutes, sections 53-164.01 and 53-165 to strike the words “under oath or affirmation” in one place in each section. Striking the requirement that the returns be filed under oath would eliminate the need for returns to be notarized and would allow the Liquor Control Commission to institute electronic filing of returns. **(LB 811.)**

Section 5 is the original **LB 1003**. It is unchanged.

Section 6 would amend section 77-2717, dealing with estates and trusts taxation to allow credits under the Microenterprise Act and the Research and Development Act to be taken against the income of nonresident estates as well as resident estates. **(LB 888.)**

Section 7 would amend section 77-27,187.01, the definitions under the Nebraska Advantage Rural Development Act to include cooperatives, including exempt cooperatives, within the definition of taxpayer eligible for benefits under the act. **(LB 1045.)**

Section 8 would also amend that act, section 77-27,191 to modify the calculation of new investment in the case of leased property. Currently, the amount of investment is the annual rent

times eight. The amendment would adopt the same calculation as under the Nebraska Advantage Act - the annual rent times the number of years in the lease not to exceed ten. **(LB 1045.)**

Section 9 would amend section 77-27,194 to insert language distributing the credits awarded to a cooperative. **(Harmonizing amendment to LB 1045.)**

Section 10 would amend section 77-5544, part of the expired Invest Nebraska Act, to relieve the obligation of the Department of Revenue to audit compliance with the provisions of the act if there are not a sufficient number of qualifiers to prevent disclosure of confidential information. **(LB 888.)**

Section 11 would amend section 77-5719, the definition of taxpayer under the Nebraska Advantage Act to clarify the exceptions from eligibility under the act. Currently, if political subdivisions or income tax exempt organizations have an ownership interest of 10 percent or more of the entity, it is not an eligible taxpayer. Under the amendment, the word “entity” would be replaced with partnership, LLC, cooperative, etc. Therefore, C corporations could be owned largely by foundations or governmental entities like pension funds and still qualify as taxpayers. **(LB 888.)**

Section 12 would amend section 77-5723, to clarify the interaction between the Act and the Nebraska Advantage Rural Development Act. Essentially, the new language states that any investment or employment that generates credits under either act cannot also generate credits under the other. However, the use of carryover credits from one act does not preclude or invalidate qualifying investment or employment under another. Finally, the existence of property tax exemptions at the location does not preclude new investment for purposes of another project. All of this replaces the language currently in subsection (8). **(LB 888.)**

Section 13 would amend section 77-5725 to change the requirements for companies seeking to qualify under the investment only tier of the Nebraska Advantage Act. Currently, to receive the sales tax refund on investment property the company must maintain at least the same number of equivalent employees as were employed in the base year each year for ten years. Under the Committee amendment the company would have no such requirement, but if at the end of the entitlement period, the average number of employees over the seven years is less than the number of employees in the base year, some or all of the benefits would be recaptured. **(LB 836.)**

This section would also change the dates for the procedure for adjusting the investment thresholds. Under current law, the adjustments made are based upon the Producer Price Index on January 1 of each year. Under the amendment, this adjustment would be based on the index each October 1. In this way, the investment threshold would be known by January 1. **(LB 888.)**

Section 14 would amend section 77-5727, dealing with recapture of benefits, to include recapture of benefits where the credits or refunds have been given incorrectly. Currently recapture occurs only when the company fails to attain or maintain the thresholds for employment or investment. Sometimes the statute of limitations for correcting errors is shorter than what could be recovered through recapture. **(LB 888.)**

Other changes to this section would defer the recapture decision for a tier 5 (investment only) qualifier until calculation of the average at the end of the entitlement period. At that time, the number of equivalent employees for each year of the entitlement period would be summed and divided by seven. The amount of recapture would be the percentage amount this average is below the number of equivalent employees in the base year. **(LB 836.)**

Section 15 would amend section 77-5728 to clarify that the distribution of benefits to pass through entities includes exempt and non-exempt cooperatives. **(LB 888 harmonizing amendment.)**

Section 16, in addition to the change in the definition of “distressed area,” would amend section 77-5903, the definitions under the Nebraska Advantage Microenterprise Tax Credit Act to make three changes. First, the amendment would add a definition of “equivalent employees” and define “microenterprise” as a business with five or fewer equivalent employees rather than five or fewer employees. Essentially, this change combines the hours of part-time employees for purposes of determining whether or not the business has five or fewer employees. **(LB 937 and LB 1045.)**

Second, the definition of “new investment” would be amended to specifically include repairs and maintenance of investment property. Finally, the Committee amendment would narrow the definition of “related persons” to mean only a spouse or minor child instead of siblings and all sons and daughters. Under the Act, two related persons may not receive benefits under the act. **(LB 937.)**

Section 18 would provide that the tax credit sections be operative for all taxable years beginning on or after January 1, 2006, the liquor tax sections would be operative July 1, 2006, and the other sections on their effective date.

Sections 19 through 21 are the repealers, and

Section 22 declares an emergency

Senator David Landis, Chairperson