

AMENDMENTS TO LB 895

Introduced by Revenue.

1 1. Insert the following new sections:

2 Section 1. Section 77-27,187.01, Revised Statutes
3 Supplement, 2007, is amended to read:

4 77-27,187.01 For purposes of the Nebraska Advantage Rural
5 Development Act, unless the context otherwise requires:

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

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

11 (3) Livestock means all animals, including cattle,
12 horses, sheep, goats, hogs, chickens, turkeys, and other species
13 of game birds and animals raised and produced subject to permit
14 and regulation by the Game and Parks Commission or the Department
15 of Agriculture;

16 (4) Livestock modernization or expansion means the
17 construction, improvement, or acquisition of buildings, facilities,
18 or equipment for livestock housing, confinement, feeding,
19 production, and waste management. Livestock modernization or
20 expansion does not include any improvements made to correct a
21 violation of the Environmental Protection Act, the Integrated Solid
22 Waste Management Act, the Livestock Waste Management Act, a rule
23 or regulation adopted and promulgated pursuant to such acts, or

1 any order of the Department of Environmental Quality undertaken
2 within five years after a complaint issued from the Director of
3 Environmental Quality under section 81-1507;

4 (5) Livestock production means the active use,
5 management, and operation of real and personal property for the
6 commercial production of livestock, for the commercial breeding,
7 training, showing, or racing of horses, or for the use of horses
8 in a recreational or tourism enterprise. The activity will be
9 considered commercial if the gross income derived from an activity
10 for two or more of the taxable years in the period of seven
11 consecutive taxable years which ends with the taxable year exceeds
12 the deductions attributable to such activity or, if the operation
13 has been in existence for less than seven years, if the activity is
14 engaged in for the purpose of generating a profit;

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

21 (7) Related taxpayers includes any corporations that are
22 part of a unitary business under the Nebraska Revenue Act of 1967
23 but are not part of the same corporate taxpayer, any business
24 entities that are not corporations but which would be a part of
25 the unitary business if they were corporations, and any business
26 entities if at least fifty percent of such entities are owned by
27 the same persons or related taxpayers and family members as defined

1 in the ownership attribution rules of the Internal Revenue Code of
2 1986, as amended;

3 (8) Taxpayer means a corporate taxpayer or other person
4 subject to either an income tax imposed by the Nebraska Revenue
5 Act of 1967 or a franchise tax under Chapter 77, article 38, or a
6 partnership, limited liability company, subchapter S corporation,
7 cooperative, including a cooperative exempt under section 521 of
8 the Internal Revenue Code of 1986, as amended, limited cooperative
9 association, or joint venture that is or would otherwise be a
10 member of the same unitary group if incorporated, which is,
11 or whose partners, members, or owners representing an ownership
12 interest of at least ninety percent of the control of such
13 entity are, subject to or exempt from such taxes, and any other
14 partnership, limited liability company, subchapter S corporation,
15 cooperative, including a cooperative exempt under section 521 of
16 the Internal Revenue Code of 1986, as amended, limited cooperative
17 association, or joint venture when the partners, members, or owners
18 representing an ownership interest of at least ninety percent of
19 the control of such entity are subject to or exempt from such
20 taxes; and

21 (9) Year means the taxable year of the taxpayer.

22 Sec. 2. Section 77-27,187.02, Revised Statutes
23 Supplement, 2007, is amended to read:

24 77-27,187.02 (1) To earn the incentives set forth in the
25 Nebraska Advantage Rural Development Act, the taxpayer shall file
26 an application for an agreement with the Tax Commissioner.

27 (2) The application shall contain:

1 (a) A written statement describing the full expected
2 employment or type of livestock production and the investment
3 amount for a qualified business, as described in section 77-27,189,
4 in this state;

5 (b) Sufficient documents, plans, and specifications as
6 required by the Tax Commissioner to support the plan and to define
7 a project; and

8 (c) An application fee of five hundred dollars. The fee
9 shall be remitted to the State Treasurer for credit to the Nebraska
10 Advantage Rural Development Fund, which fund is hereby created. Any
11 money in the fund available for investment shall be invested by the
12 state investment officer pursuant to the Nebraska Capital Expansion
13 Act and the Nebraska State Funds Investment Act. The application
14 and all supporting information shall be confidential except for the
15 name of the taxpayer, the location of the project, and the amounts
16 of increased employment or investment.

17 (3) (a) The Tax Commissioner shall approve the application
18 and authorize the total amount of credits expected to be earned as
19 a result of the project if he or she is satisfied that the plan in
20 the application defines a project that (i) meets the requirements
21 established in section 77-27,188 and such requirements will be
22 reached within the required time period and (ii) for projects other
23 than livestock modernization or expansion projects, is located in
24 an eligible county, city, or village. ~~or enterprise zone.~~

25 (b) The Tax Commissioner shall not approve further
26 applications once the expected credits from the approved projects
27 total two million five hundred thousand dollars in each of fiscal

1 years 2004-05 and 2005-06, ~~and~~ three million dollars in each of
2 fiscal year years 2006-07 and 2007-08, and four million dollars in
3 fiscal year 2008-09 and each fiscal year thereafter. Four hundred
4 dollars of the application fee shall be refunded to the applicant
5 if the application is not approved because the expected credits
6 from approved projects exceed such amounts.

7 (c) Applications for benefits shall be considered in the
8 order in which they are received.

9 (d) Applications shall be filed by November 1 and shall
10 be complete by December 1 of each calendar year. Any application
11 that is filed after November 1 or that is not complete on December
12 1 shall be considered to be filed during the following calendar
13 year.

14 (4) 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 plans 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 Rural Development Act up to
21 the total amount that were authorized by the Tax Commissioner
22 at the time of approval. The application, and all supporting
23 documentation, to the extent approved, shall be considered a part
24 of the agreement. The agreement shall state:

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

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

1 level 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) The maximum amount of credits authorized.

6 Sec. 3. Section 77-27,188, Revised Statutes Supplement,
7 2007, is amended to read:

8 77-27,188 (1) A refundable credit against the taxes
9 imposed by the Nebraska Revenue Act of 1967 shall be allowed to any
10 taxpayer who has an approved application pursuant to the Nebraska
11 Advantage Rural Development Act, who is engaged in a qualifying
12 business as described in section 77-27,189, and who after January
13 1, 2006:

14 (a)(i) Increases employment by two new equivalent
15 employees and makes an increased investment of at least one hundred
16 twenty-five thousand dollars prior to the end of the first taxable
17 year after the year in which the application was submitted in
18 (A) any county in this state with a population of fewer than
19 fifteen thousand inhabitants, according to the most recent federal
20 decennial census, ~~or in any designated enterprise zone pursuant to~~
21 42 U.S.C. 11501 ~~of the Enterprise Zone Act;~~ (B) any village in this
22 state, or (C) any area within the corporate limits of a city of
23 the metropolitan class consisting of one or more contiguous census
24 tracts, as determined by the most recent federal decennial census,
25 which contain a percentage of persons below the poverty line of
26 greater than thirty percent, and all census tracts contiguous to
27 such tract or tracts; or

1 (ii) Increases employment by five new equivalent
2 employees and makes an increased investment of at least two hundred
3 fifty thousand dollars prior to the end of the first taxable year
4 after the year in which the application was submitted in any county
5 in this state with a population of less than twenty-five thousand
6 inhabitants, according to the most recent federal decennial census,
7 or any city of the second class; and

8 (b) Pays a minimum qualifying wage of eight dollars and
9 twenty-five cents per hour to the new equivalent employees for
10 which tax credits are sought under the Nebraska Advantage Rural
11 Development Act. The Department of Revenue shall adjust the minimum
12 qualifying wages required for applications filed after January 1,
13 2004, and each January 1 thereafter, as follows: The current rural
14 Nebraska average weekly wage shall be divided by the rural Nebraska
15 average weekly wage for 2003; and the result shall be multiplied by
16 the eight dollars and twenty-five cents minimum qualifying wage for
17 2003 and rounded to the nearest one cent. The amount of increase
18 or decrease in the minimum qualifying wages for any year shall
19 be the cumulative change in the rural Nebraska average weekly
20 wage since 2003. For purposes of this subsection, rural Nebraska
21 average weekly wage means the most recent average weekly wage paid
22 by all employers in all counties with a population of less than
23 twenty-five thousand inhabitants as reported by October 1 by the
24 Department of Labor.

25 For purposes of this section, a teleworker working in
26 Nebraska from his or her residence for a taxpayer shall be
27 considered an employee of the taxpayer, and property of the

1 taxpayer provided to the teleworker working in Nebraska from his
2 or her residence shall be considered an investment. Teleworker
3 includes an individual working on a per-item basis and an
4 independent contractor working for the taxpayer so long as the
5 taxpayer withholds Nebraska income tax from wages or other payments
6 made to such teleworker. For purposes of calculating the number
7 of new equivalent employees when the teleworkers are paid on a
8 per-item basis or are independent contractors, the total wages or
9 payments made to all such new employees during the year shall be
10 divided by the qualifying wage as determined in subdivision (b) of
11 this subsection, with the result divided by two thousand eighty
12 hours.

13 (2) A refundable credit against the taxes imposed by the
14 Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who
15 (a) has an approved application pursuant to the Nebraska Advantage
16 Rural Development Act, (b) is engaged in livestock production, and
17 (c) after January 1, 2007, invests at least fifty thousand dollars
18 for livestock modernization or expansion.

19 (3) The amount of the credit allowed under subsection
20 (1) of this section shall be three thousand dollars for each new
21 equivalent employee and two thousand seven hundred fifty dollars
22 for each fifty thousand dollars of increased investment. The amount
23 of the credit allowed under subsection (2) of this section shall
24 be ten percent of the investment, not to exceed a credit of
25 thirty thousand dollars. For each application, a taxpayer engaged
26 in livestock production may qualify for a credit under either
27 subsection (1) or (2) of this section, but cannot qualify for more

1 than one credit per application.

2 (4) An employee of a qualified employee leasing company
3 shall be considered to be an employee of the client-lessee for
4 purposes of this section if the employee performs services for the
5 client-lessee. A qualified employee leasing company shall provide
6 the Department of Revenue access to the records of employees leased
7 to the client-lessee.

8 (5) The credit shall not exceed the amounts set out in
9 the application and approved by the Tax Commissioner.

10 (6) (a) If a taxpayer who receives tax credits creates
11 fewer jobs or less investment than required in the project
12 agreement, the taxpayer shall repay the tax credits as provided in
13 this subsection.

14 (b) If less than seventy-five percent of the required
15 jobs in the project agreement are created, one hundred percent
16 of the job creation tax credits shall be repaid. If seventy-five
17 percent or more of the required jobs in the project agreement are
18 created, no repayment of the job creation tax credits is necessary.

19 (c) If less than seventy-five percent of the required
20 investment in the project agreement is created, one hundred percent
21 of the investment tax credits shall be repaid. If seventy-five
22 percent or more of the required investment in the project
23 agreement is created, no repayment of the investment tax credits is
24 necessary.

25 (7) For taxpayers who submitted applications for benefits
26 under the Nebraska Advantage Rural Development Act before January
27 1, 2006, subsection (1) of this section, as such subsection existed

1 immediately prior to such date, shall continue to apply to such
2 taxpayers. The changes made by Laws 2005, LB 312, shall not
3 preclude a taxpayer from receiving the tax incentives earned prior
4 to January 1, 2006.

5 Sec. 4. Section 77-27,196.01, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 77-27,196.01 (1) The changes made in sections 77-27,188,
8 77-27,188.02, 77-27,190, 77-27,192, 77-27,193, and 77-27,194 by
9 Laws 1997, LB 886, shall become operative for all credits earned in
10 tax years beginning, or deemed to begin, on and after January 1,
11 1998. For all credits earned in tax years beginning, or deemed to
12 begin, prior to January 1, 1998, the provisions of the Employment
13 Expansion and Investment Incentive Act as they existed immediately
14 prior to such date shall apply.

15 (2) The changes made in sections 77-27,187.01 and
16 77-27,188 by Laws 1999, LB 539, shall become operative for all
17 credits earned in tax years beginning, or deemed to begin, on
18 and after January 1, 1999. For all credits earned in tax years
19 beginning, or deemed to begin, prior to January 1, 1999, the
20 provisions of the Employment Expansion and Investment Incentive Act
21 as they existed immediately prior to such date shall apply.

22 (3) The changes made in sections 77-27,188, 77-27,188.02,
23 and 77-27,192 by Laws 2001, LB 169, shall become operative for
24 all credits earned in tax years beginning, or deemed to begin, on
25 and after January 1, 2001. For all credits earned in tax years
26 beginning, or deemed to begin, prior to January 1, 2001, the
27 provisions of the Employment Expansion and Investment Incentive Act

1 as they existed immediately prior to such date shall apply.

2 (4) The changes made in sections 77-27,187.01,
3 77-27,187.02, and 77-27,188 by this legislative bill become
4 operative for applications filed on and after the effective date
5 of this act.

6 2. On page 31, line 15, after "Original" insert "section
7 77-27,196.01, Reissue Revised Statutes of Nebraska,"; and in line
8 17 strike "77-5715 and" and insert "77-27,187.01, 77-27,187.02,
9 77-27,188, 77-5715, and".

10 3. Renumber the remaining sections and correct internal
11 references accordingly.