

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 954

Introduced by Giese, 17; Schilz, 47.

Read first time January 14, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska Advantage Act; to amend section
2 77-5726, Reissue Revised Statutes of Nebraska; to change
3 provisions relating to refunds of local sales and use
4 taxes; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5726, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-5726 (1) (a) The credits prescribed in section 77-5725
4 shall be established by filing the forms required by the Tax
5 Commissioner with the income tax return for the year. The credits
6 may be used and shall be applied in the order in which they
7 were first allowed. The credits may be used after any other
8 nonrefundable credits to reduce the taxpayer's income tax liability
9 imposed by sections 77-2714 to 77-27,135. Any decision on how part
10 of the credit is applied shall not limit how the remaining credit
11 could be applied under this section.

12 (b) The taxpayer may use the credit provided in
13 subsection (3) of section 77-5725 to reduce the taxpayer's income
14 tax withholding employer or payor tax liability under section
15 77-2756 or 77-2757 to the extent such liability is attributable
16 to the number of new employees at the project, excluding any
17 compensation in excess of one million dollars paid to any one
18 employee during the year. The taxpayer may use the credit provided
19 in subsection (4) of section 77-5725 to reduce the taxpayer's
20 income tax withholding employer or payor tax liability under
21 section 77-2756 or 77-2757 to the extent such liability is
22 attributable to all employees employed at the project, other than
23 base-year employees and excluding any compensation in excess of one
24 million dollars paid to any one employee during the year. To the
25 extent of the credit used, such withholding shall not constitute

1 public funds or state tax revenue and shall not constitute a trust
2 fund or be owned by the state. The use by the taxpayer of the
3 credit shall not change the amount that otherwise would be reported
4 by the taxpayer to the employee under section 77-2754 as income tax
5 withheld and shall not reduce the amount that otherwise would be
6 allowed by the state as a refundable credit on an employee's income
7 tax return as income tax withheld under section 77-2755.

8 For a tier 1, tier 2, tier 3, or tier 4 project, the
9 amount of credits used against income tax withholding shall not
10 exceed the withholding attributable to new employees employed at
11 the project, excluding any compensation in excess of one million
12 dollars paid to any one employee during the year.

13 For a tier 6 project, the amount of credits used
14 against income tax withholding shall not exceed the withholding
15 attributable to all employees employed at the project, other than
16 base-year employees and excluding any compensation in excess of one
17 million dollars paid to any one employee during the year.

18 If the amount of credit used by the taxpayer against
19 income tax withholding exceeds this amount, the excess withholding
20 shall be returned to the Department of Revenue in the manner
21 provided in section 77-2756, such excess amount returned shall be
22 considered unused, and the amount of unused credits may be used
23 as otherwise permitted in this section or shall carry over to the
24 extent authorized in subdivision (1)(d) of this section.

25 (c) Credits may be used to obtain a refund of sales and

1 use taxes under the Local Option Revenue Act, the Nebraska Revenue
2 Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not
3 otherwise refundable that are paid on purchases, including rentals,
4 for use at the project for a tier 1, tier 2, tier 3, or tier 4
5 project or for use within this state for a tier 6 project.

6 (d) The credits earned for a tier 6 project may be used
7 to obtain a payment from the state equal to the real property
8 taxes due after the year the required levels of employment and
9 investment were met and before the end of the carryover period,
10 for real property that is included in such project and acquired
11 by the taxpayer, whether by lease or purchase, after the date the
12 application was filed. The payment from the state shall be made
13 only after payment of the real property taxes have been made to the
14 county as required by law. Payments shall not be allowed for any
15 taxes paid on real property for which the taxes are divided under
16 section 18-2147 or 58-507.

17 (e) Credits may be carried over until fully utilized,
18 except that such credits may not be carried over more than nine
19 years after the year of application for a tier 1 or tier 3 project,
20 fourteen years after the year of application for a tier 2 or tier
21 4 project, or more than one year past the end of the entitlement
22 period for a tier 6 project.

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

25 (b) Refund claims shall be filed no more than once each

1 quarter for refunds under the Nebraska Advantage Act, except that
2 any claim for a refund in excess of twenty-five thousand dollars
3 may be filed at any time.

4 (c) Any refund claim for sales and use taxes on materials
5 incorporated into real estate as a part of the project shall be
6 filed by and the refund paid to the owner of the improvement
7 to real estate. A refund claim for such materials purchased
8 by a purchasing agent shall include a copy of the purchasing
9 agent appointment, the contract price, and a certification by
10 the contractor or repairperson of the percentage of the materials
11 incorporated into the project on which sales and use taxes were
12 paid to Nebraska after appointment as purchasing agent.

13 (d) All refund claims shall be filed, processed, and
14 allowed as any other claim under section 77-2708, except that
15 the amounts allowed to be refunded under the Nebraska Advantage
16 Act shall be deemed to be overpayments and shall be refunded
17 notwithstanding any limitation in subdivision (2)(a) of section
18 77-2708. The refund may be allowed if the claim is filed within
19 three calendar years from the end of the year the required levels
20 of employment and investment are met or within the period set forth
21 in section 77-2708.

22 (e) If a claim for a refund of sales and use taxes
23 under the Local Option Revenue Act or sections 13-319, 13-324, and
24 13-2813 of more than twenty-five thousand dollars is filed by June
25 15 of a given year, the refund shall be made on or after November

1 15 of the same year. If such a claim is filed on or after June
2 16 of a given year, the refund shall not be made until on or
3 after November 15 of the following year. The Tax Commissioner shall
4 notify the affected city, village, county, or municipal county of
5 the amount of refund claims of sales and use taxes under the Local
6 Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are
7 in excess of twenty-five thousand dollars on or before July 1 of
8 the year before the claims will be paid under this section.

9 (f) Interest shall not be allowed on any taxes refunded
10 under the Nebraska Advantage Act.

11 (3) The appointment of purchasing agents shall be
12 recognized for the purpose of changing the status of a contractor
13 or repairperson as the ultimate consumer of tangible personal
14 property purchased after the date of the appointment which is
15 physically incorporated into the project and becomes the property
16 of the owner of the improvement to real estate. The purchasing
17 agent shall be jointly liable for the payment of the sales and use
18 tax on the purchases with the owner of the improvement to real
19 estate.

20 (4) A determination that a taxpayer is not engaged in a
21 qualified business or has failed to meet or maintain the required
22 levels of employment or investment for incentives, exemptions, or
23 recapture may be protested within sixty days after the mailing of
24 the written notice of the proposed determination. If the notice
25 of proposed determination is not protested within the sixty-day

1 period, the proposed determination is a final determination. If the
2 notice is protested, the Tax Commissioner shall issue a written
3 order resolving such protests. The written order of the Tax
4 Commissioner resolving a protest may be appealed to the district
5 court of Lancaster County within thirty days after the issuance of
6 the order.

7 (5) For a project that expands an existing business, the
8 total amount of refunds of sales and use taxes under the Local
9 Option Revenue Act and sections 13-319, 13-324, and 13-2813 that
10 may be claimed by a taxpayer in any calendar year shall be limited
11 to the amount by which the sales and use taxes paid on purchases
12 during the calendar year by the taxpayer exceed the amount of sales
13 and use taxes paid by the taxpayer in the calendar year prior to
14 the year of application.

15 Sec. 2. Original section 77-5726, Reissue Revised
16 Statutes of Nebraska, is repealed.