

AMENDMENTS TO LB 34

Introduced by Revenue

1 1. Strike section 6 and insert the following new
2 sections:

3 Sec. 6. Section 77-5723, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 77-5723 (1) In order to utilize the incentives set
6 forth in the Nebraska Advantage Act, the taxpayer shall file
7 an application, on a form developed by the Tax Commissioner,
8 requesting an agreement with the Tax Commissioner.

9 (2) The application shall contain:

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

12 (b) Sufficient documents, plans, and specifications as
13 required by the Tax Commissioner to support the plan and to define
14 a project;

15 (c) If more than one location within this state is
16 involved, sufficient documentation to show that the employment
17 and investment at different locations are interdependent parts of
18 the plan. A headquarters shall be presumed to be interdependent
19 with each other location directly controlled by such headquarters.

20 If a taxpayer's plan includes every location in the state that
21 is involved in a qualified business activity, then all of the
22 taxpayer's locations are presumed to be interdependent. A showing
23 that the parts of the plan would be considered parts of a unitary

1 business for corporate income tax purposes shall not be sufficient
2 to show interdependence for the purposes of this subdivision;

3 (d) A nonrefundable application fee of one thousand
4 dollars for a tier 1 project, two thousand five hundred dollars for
5 a tier 2, tier 3, or tier 5 project, five thousand dollars for a
6 tier 4 project, and ten thousand dollars for a tier 6 project. The
7 fee shall be credited to the Nebraska Incentives Fund; and

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

12 The application and all supporting information shall be
13 confidential except for the name of the taxpayer, the location of
14 the project, the amounts of increased employment and investment,
15 and the information required to be reported by sections 77-5731 and
16 77-5734.

17 (3) An application must be complete to establish the date
18 of the application. An application shall be considered complete
19 once it contains the items listed in subsection (2) of this
20 section, regardless of the Tax Commissioner's additional needs
21 pertaining to information or clarification in order to approve or
22 not approve the application.

23 (4) Once satisfied that the plan in the application
24 defines a project consistent with the purposes stated in the
25 Nebraska Advantage Act in one or more qualified business activities
26 within this state, that the taxpayer and the plan will qualify for
27 benefits under the act, and that the required levels of employment

1 and investment for the project will be met prior to the end of the
2 fourth year after the year in which the application was submitted
3 for a tier 1, tier 3, or tier 6 project or the end of the sixth
4 year after the year in which the application was submitted for
5 a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall
6 approve the application. For a tier 5 project that is sequential
7 to a tier 2 large data center project, the required level of
8 investment shall be met prior to the end of the fourth year after
9 the expiration of the tier 2 large data center project entitlement
10 period relating to direct sales tax refunds.

11 (5) The Tax Commissioner shall make his or her
12 determination to approve or not approve an application within one
13 hundred eighty days after the date of the application. If the Tax
14 Commissioner requests, by mail or by electronic means, additional
15 information or clarification from the taxpayer in order to make his
16 or her determination, such one-hundred-eighty-day period shall be
17 tolled from the time the Tax Commissioner makes the request to the
18 time he or she receives the requested information or clarification
19 from the taxpayer. The taxpayer and the Tax Commissioner may also
20 agree to extend the one-hundred-eighty-day period. If the Tax
21 Commissioner fails to make his or her determination within the
22 prescribed one-hundred-eighty-day period, the application shall be
23 deemed approved.

24 (6) Within one hundred eighty days after ~~(5) After~~
25 approval of the application, the taxpayer and the Tax Commissioner
26 shall enter into prepare and mail a written agreement to the
27 taxpayer for the taxpayer's signature. The taxpayer and the Tax

1 Commissioner shall enter into a written agreement. The taxpayer
2 shall agree to complete the project, and the Tax Commissioner,
3 on behalf of the State of Nebraska, shall designate the approved
4 plan of the taxpayer as a project and, in consideration of
5 the taxpayer's agreement, agree to allow the taxpayer to use
6 the incentives contained in the Nebraska Advantage Act. The
7 application, and all supporting documentation, to the extent
8 approved, shall be considered a part of the agreement. The
9 agreement shall state:

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

12 (b) The time period under the act in which the required
13 levels must be met;

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

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

17 (e) A requirement that the company update the Department
18 of Revenue annually on any changes in plans or circumstances which
19 affect the timetable of sales tax refunds as set out in the
20 application. If the company fails to comply with this requirement,
21 the Tax Commissioner may defer any pending sales tax refunds until
22 the company does comply.

23 ~~(6)~~ (7) The incentives contained in section 77-5725 shall
24 be in lieu of the tax credits allowed by the Nebraska Advantage
25 Rural Development Act for any project. In computing credits under
26 the act, any investment or employment which is eligible for
27 benefits or used in determining benefits under the Nebraska

1 Advantage Act shall be subtracted from the increases computed
2 for determining the credits under section 77-27,188. New investment
3 or employment at a project location that results in the meeting
4 or maintenance of the employment or investment requirements, the
5 creation of credits, or refunds of taxes under the Employment and
6 Investment Growth Act shall not be considered new investment or
7 employment for purposes of the Nebraska Advantage Act. The use of
8 carryover credits under the Employment and Investment Growth Act,
9 the Invest Nebraska Act, the Nebraska Advantage Rural Development
10 Act, or the Quality Jobs Act shall not preclude investment and
11 employment from being considered new investment or employment under
12 the Nebraska Advantage Act. The use of property tax exemptions at
13 the project under the Employment and Investment Growth Act shall
14 not preclude investment not eligible for the property tax exemption
15 from being considered new investment under the Nebraska Advantage
16 Act.

17 ~~(7)~~ (8) A taxpayer and the Tax Commissioner may enter
18 into agreements for more than one project and may include more
19 than one project in a single agreement. The projects may be either
20 sequential or concurrent. A project may involve the same location
21 as another project. No new employment or new investment shall be
22 included in more than one project for either the meeting of the
23 employment or investment requirements or the creation of credits.
24 When projects overlap and the plans do not clearly specify, then
25 the taxpayer shall specify in which project the employment or
26 investment belongs.

27 ~~(8)~~ (9) The taxpayer may request that an agreement be

1 modified if the modification is consistent with the purposes of
2 the act and does not require a change in the description of
3 the project. An agreement may not be modified to a tier that
4 would grant a higher level of benefits to the taxpayer or to
5 a tier 1 project. Once satisfied that the modification to the
6 agreement is consistent with the purposes stated in the act, the
7 Tax Commissioner and taxpayer may amend the agreement. For a tier 6
8 project, the taxpayer must agree to limit the project to qualified
9 activities allowable under tier 2 and tier 4.

10 Sec. 10. Section 77-5734, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-5734 The Department of Revenue shall, on or before
13 the fifteenth day of October and February of every year and the
14 fifteenth day of April in odd-numbered years, make an estimate
15 of the amount of sales and use tax refunds to be paid under the
16 Nebraska Advantage Act during the fiscal years to be forecast under
17 section 77-27,158. The estimate shall be based on the most recent
18 data available, including pending and approved applications and
19 updates thereof as are required by subdivisions (2)(e) and ~~(5)(e)~~
20 (6)(e) of section 77-5723. The estimate shall be forwarded to the
21 Legislative Fiscal Analyst and the Nebraska Economic Forecasting
22 Advisory Board and made a part of the advisory forecast required by
23 section 77-27,158.

24 2. On page 20, line 21, strike "and 77-5728" and insert
25 "77-5728, and 77-5734".

26 3. Renumber the remaining sections accordingly.