

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 434

Introduced by Revenue Committee: Linehan, 39, Chairperson; Albrecht, 17;
Briese, 41; Friesen, 34; Lindstrom, 18.

Read first time January 15, 2021

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-382, 77-385, and 77-5731, Reissue Revised Statutes of Nebraska,
- 3 and section 77-6837, Revised Statutes Cumulative Supplement, 2020;
- 4 to change provisions relating to tax expenditure reports and certain
- 5 joint hearings of the Revenue Committee and Appropriations Committee
- 6 of the Legislature; to repeal the original sections; and to declare
- 7 an emergency.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-382, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-382 (1) The department shall prepare a tax expenditure report
4 describing (a) the basic provisions of the Nebraska tax laws, (b) the
5 actual or estimated revenue loss caused by the exemptions, deductions,
6 exclusions, deferrals, credits, and preferential rates in effect on July
7 1 of each year and allowed under Nebraska's tax structure and in the
8 property tax, (c) the actual or estimated revenue loss caused by failure
9 to impose sales and use tax on services purchased for nonbusiness use,
10 and (d) the elements which make up the tax base for state and local
11 income, including income, sales and use, property, and miscellaneous
12 taxes.

13 (2) The department shall review the major tax exemptions for which
14 state general funds are used to reduce the impact of revenue lost due to
15 a tax expenditure. The report shall indicate an estimate of the amount of
16 the reduction in revenue resulting from the operation of all tax
17 expenditures. The report shall list each tax expenditure relating to
18 sales and use tax under the following categories:

19 (a) Agriculture, which shall include a separate listing for the
20 following items: Agricultural machinery; agricultural chemicals; seeds
21 sold to commercial producers; water for irrigation and manufacturing;
22 commercial artificial insemination; mineral oil as dust suppressant;
23 animal grooming; oxygen for use in aquaculture; animal life whose
24 products constitute food for human consumption; and grains;

25 (b) Business across state lines, which shall include a separate
26 listing for the following items: Property shipped out-of-state;
27 fabrication labor for items to be shipped out-of-state; property to be
28 transported out-of-state; property purchased in other states to be used
29 in Nebraska; aircraft delivery to an out-of-state resident or business;
30 state reciprocal agreements for industrial machinery; and property taxed
31 in another state;

1 (c) Common carrier and logistics, which shall include a separate
2 listing for the following items: Railroad rolling stock and repair parts
3 and services; common or contract carriers and repair parts and services;
4 common or contract carrier accessories; and common or contract carrier
5 safety equipment;

6 (d) Consumer goods, which shall include a separate listing for the
7 following items: Motor vehicles and motorboat trade-ins; merchandise
8 trade-ins; certain medical equipment and medicine; newspapers;
9 laundromats; telefloral deliveries; motor vehicle discounts for the
10 disabled; and political campaign fundraisers;

11 (e) Energy, which shall include a separate listing for the following
12 items: Motor fuels; energy used in industry; energy used in agriculture;
13 aviation fuel; and minerals, oil, and gas severed from real property;

14 (f) Food, which shall include a separate listing for the following
15 items: Food for home consumption; Supplemental Nutrition Assistance
16 Program; school lunches; meals sold by hospitals; meals sold by
17 institutions at a flat rate; food for the elderly, handicapped, and
18 Supplemental Security Income recipients; and meals sold by churches;

19 (g) General business, which shall include a separate listing for the
20 following items: Component and ingredient parts; manufacturing machinery;
21 containers; film rentals; molds and dies; syndicated programming;
22 intercompany sales; intercompany leases; sale of a business or farm
23 machinery; and transfer of property in a change of business ownership;

24 (h) Lodging and shelter, which shall include a separate listing for
25 the following item: Room rentals by certain institutions;

26 (i) Miscellaneous, which shall include a separate listing for the
27 following items: Cash discounts and coupons; separately stated finance
28 charges; casual sales; lease-to-purchase agreements; and separately
29 stated taxes;

30 (j) Nonprofits, governments, and exempt entities, which shall
31 include a separate listing for the following items: Purchases by

1 political subdivisions of the state; purchases by churches and nonprofit
2 colleges and medical facilities; purchasing agents for public real estate
3 construction improvements; contractor as purchasing agent for public
4 agencies; Nebraska lottery; admissions to school events; sales on Native
5 American Indian reservations; school-supporting fundraisers; fine art
6 purchases by a museum; purchases by the Nebraska State Fair Board;
7 purchases by the Nebraska Investment Finance Authority and licensees of
8 the State Racing Commission; purchases by the United States Government;
9 public records; and sales by religious organizations;

10 (k) Recent sales tax expenditures, which shall include a separate
11 listing for each sales tax expenditure created by statute or rule and
12 regulation after July 19, 2012;

13 (l) Services purchased for nonbusiness use, which shall include a
14 separate listing for each such service, including, but not limited to,
15 the following items: Maintenance ~~Motor vehicle cleaning, maintenance, and~~
16 ~~repair services; cleaning and repair of clothing; cleaning, maintenance,~~
17 ~~and repair of other tangible personal property; maintenance, painting,~~
18 ~~and repair of real property; entertainment admissions; personal care~~
19 ~~services; lawn care, gardening, and landscaping services; pet-related~~
20 ~~services; storage and moving services; household utilities; other~~
21 ~~personal services; taxi, limousine, and other transportation services;~~
22 ~~legal services; accounting services; other professional services; and~~
23 ~~other real estate services; and~~

24 (m) Telecommunications, which shall include a separate listing for
25 the following items: Telecommunications access charges; prepaid calling
26 arrangements; conference bridging services; and nonvoice data services.

27 (3) It is the intent of the Legislature that nothing in the Tax
28 Expenditure Reporting Act shall cause the valuation or assessment of any
29 property exempt from taxation on the basis of its use exclusively for
30 religious, educational, or charitable purposes.

31 Sec. 2. Section 77-385, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 77-385 (1) The report required under section 77-382 and a summary of
3 the report shall be submitted to the Governor, the Executive Board of the
4 Legislative Council, and the chairpersons of the Legislature's Revenue
5 and Appropriations Committees on or before October 15, 1991, and October
6 15 of every even-numbered year thereafter. The report submitted to the
7 executive board and the committees shall be submitted electronically. The
8 department shall, on or before December 1 of each even-numbered year,
9 appear at a joint hearing of the Appropriations Committee of the
10 Legislature and the Revenue Committee of the Legislature and present the
11 report. Any supplemental information requested by three or more committee
12 members shall be presented within thirty days after the request. The
13 summary shall be included with or appended to the Governor's budget
14 presented to the Legislature in odd-numbered years.

15 (2)(a) In addition to the tax expenditure report required under
16 section 77-382, the department shall prepare an annual report that
17 focuses specifically on the tax expenditures relating to sales and use
18 tax as follows:

19 (i) For 2014 and every fourth year thereafter, the report shall
20 analyze the actual or estimated revenue loss caused by the tax
21 expenditures described in subdivisions (2)(a) through (c) of section
22 77-382;

23 (ii) For 2015 and every fourth year thereafter, the report shall
24 analyze the actual or estimated revenue loss caused by the tax
25 expenditures described in subdivisions (2)(d) through (f) of section
26 77-382;

27 (iii) For 2016 and every fourth year thereafter, the report shall
28 analyze the actual or estimated revenue loss caused by the tax
29 expenditures described in subdivisions (2)(g) through (j) of section
30 77-382; and

31 (iv) For 2017 and every fourth year thereafter, the report shall

1 analyze the actual or estimated revenue loss caused by the tax
2 expenditures described in subdivisions (2)(k) through (m) of section
3 77-382.

4 (b) The report required under this subsection shall be submitted to
5 the Governor, the Executive Board of the Legislative Council, and the
6 chairpersons of the Revenue Committee of the Legislature and the
7 Appropriations Committee of the Legislature on or before October 15 of
8 each year. The report submitted to the executive board and the committees
9 shall be submitted electronically. ~~The department shall, on or before~~
10 ~~December 1 of each year, appear at a joint hearing of the Appropriations~~
11 ~~Committee of the Legislature and the Revenue Committee of the Legislature~~
12 ~~and present the report.~~ Any supplemental information requested by three
13 or more committee members shall be presented within thirty days after the
14 request.

15 Sec. 3. Section 77-5731, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 77-5731 (1) The Tax Commissioner shall submit electronically an
18 annual report to the Legislature no later than July 15 of each year. The
19 Department of Revenue shall, on or before September 1, 2022, and on or
20 before September 1 of each even-numbered year thereafter ~~of each year,~~
21 appear at a joint hearing of the Appropriations Committee of the
22 Legislature and the Revenue Committee of the Legislature and present the
23 report. Any supplemental information requested by three or more committee
24 members shall be presented within thirty days after the request.

25 (2) The report shall list (a) the agreements which have been signed
26 during the previous year, (b) the agreements which are still in effect,
27 (c) the identity of each taxpayer who is party to an agreement, and (d)
28 the location of each project.

29 (3) The report shall also state, for taxpayers who are parties to
30 agreements, by industry group (a) the specific incentive options applied
31 for under the Nebraska Advantage Act, (b) the refunds allowed on the

1 investment, (c) the credits earned, (d) the credits used to reduce the
2 corporate income tax and the credits used to reduce the individual income
3 tax, (e) the credits used to obtain sales and use tax refunds, (f) the
4 credits used against withholding liability, (g) the number of jobs
5 created under the act, (h) the expansion of capital investment, (i) the
6 estimated wage levels of jobs created under the act subsequent to the
7 application date, (j) the total number of qualified applicants, (k) the
8 projected future state revenue gains and losses, (l) the sales tax
9 refunds owed, (m) the credits outstanding under the act, (n) the value of
10 personal property exempted by class in each county under the act, (o) the
11 value of property for which payments equal to property taxes paid were
12 allowed in each county, and (p) the total amount of the payments.

13 (4) In estimating the projected future state revenue gains and
14 losses, the report shall detail the methodology utilized, state the
15 economic multipliers and industry multipliers used to determine the
16 amount of economic growth and positive tax revenue, describe the analysis
17 used to determine the percentage of new jobs attributable to the Nebraska
18 Advantage Act assumption, and identify limitations that are inherent in
19 the analysis method.

20 (5) The report shall provide an explanation of the audit and review
21 processes of the department in approving and rejecting applications or
22 the grant of incentives and in enforcing incentive recapture. The report
23 shall also specify the median period of time between the date of
24 application and the date the agreement is executed for all agreements
25 executed by December 31 of the prior year.

26 (6) The report shall provide information on project-specific total
27 incentives used every two years for each approved project. The report
28 shall disclose (a) the identity of the taxpayer, (b) the location of the
29 project, and (c) the total credits used and refunds approved during the
30 immediately preceding two years expressed as a single, aggregated total.
31 The incentive information required to be reported under this subsection

1 shall not be reported for the first year the taxpayer attains the
2 required employment and investment thresholds. The information on first-
3 year incentives used shall be combined with and reported as part of the
4 second year. Thereafter, the information on incentives used for
5 succeeding years shall be reported for each project every two years
6 containing information on two years of credits used and refunds approved.
7 The incentives used shall include incentives which have been approved by
8 the department, but not necessarily received, during the previous two
9 years.

10 (7) The report shall include an executive summary which shows
11 aggregate information for all projects for which the information on
12 incentives used in subsection (6) of this section is reported as follows:

13 (a) The total incentives used by all taxpayers for projects detailed in
14 subsection (6) of this section during the previous two years; (b) the
15 number of projects; (c) the new jobs at the project for which credits
16 have been granted; (d) the average compensation paid employees in the
17 state in the year of application and for the new jobs at the project; and
18 (e) the total investment for which incentives were granted. The executive
19 summary shall summarize the number of states which grant investment tax
20 credits, job tax credits, sales and use tax refunds for qualified
21 investment, and personal property tax exemptions and the investment and
22 employment requirements under which they may be granted.

23 (8) No information shall be provided in the report that is protected
24 by state or federal confidentiality laws.

25 Sec. 4. Section 77-6837, Revised Statutes Cumulative Supplement,
26 2020, is amended to read:

27 77-6837 (1) Beginning in 2021, the director and the Tax Commissioner
28 shall jointly submit electronically an annual report for the previous
29 fiscal year to the Legislature no later than October 31 of each year. The
30 report shall be on a fiscal year, accrual basis that satisfies the
31 requirements set by the Governmental Accounting Standards Board. The

1 Department of Economic Development and the Department of Revenue shall
2 together, on or before December 15, 2022, and on or before December 15 of
3 each even-numbered year thereafter ~~of each year~~, appear at a joint
4 hearing of the Appropriations Committee of the Legislature and the
5 Revenue Committee of the Legislature and present the report. Any
6 supplemental information requested by three or more committee members
7 shall be presented within thirty days after the request.

8 (2) The report shall list (a) the agreements which have been signed
9 during the previous year, (b) the agreements which are still in effect,
10 (c) the identity of each taxpayer who is party to an agreement, and (d)
11 the qualified location or locations.

12 (3) The report shall also state, for taxpayers who are parties to
13 agreements, by industry group (a) the specific incentive options applied
14 for under the Imagine Nebraska Act, (b) the refunds and reductions in tax
15 allowed on the investment, (c) the credits earned, (d) the credits used
16 to reduce the corporate income tax and the credits used to reduce the
17 individual income tax, (e) the credits used to obtain sales and use tax
18 refunds, (f) the credits used against withholding liability, (g) the
19 credits used for job training, (h) the credits used for infrastructure
20 development, (i) the number of jobs created under the act, (j) the
21 expansion of capital investment, (k) the estimated wage levels of jobs
22 created under the act subsequent to the application date, (l) the total
23 number of qualified applicants, (m) the projected future state revenue
24 gains and losses, (n) the sales tax refunds owed, (o) the credits
25 outstanding under the act, (p) the value of personal property exempted by
26 class in each county under the act, (q) the total amount of the payments,
27 (r) the amount of workforce training and infrastructure development loans
28 issued, outstanding, repaid, and delinquent, and (s) the value of health
29 coverage provided to employees at qualified locations during the year who
30 are not base-year employees and who are paid the required compensation.
31 The report shall include the estimate of the amount of sales and use tax

1 refunds to be paid and tax credits to be used as were required for the
2 October forecast under section 77-6839.

3 (4) In estimating the projected future state revenue gains and
4 losses, the report shall detail the methodology utilized, state the
5 economic multipliers and industry multipliers used to determine the
6 amount of economic growth and positive tax revenue, describe the analysis
7 used to determine the percentage of new jobs attributable to the Imagine
8 Nebraska Act, and identify limitations that are inherent in the analysis
9 method.

10 (5) The report shall provide an explanation of the audit and review
11 processes of the Department of Economic Development and the Department of
12 Revenue, as applicable, in approving and rejecting applications or the
13 grant of incentives and in enforcing incentive recapture. The report
14 shall also specify the median period of time between the date of
15 application and the date the agreement is executed for all agreements
16 executed by December 31 of the prior year.

17 (6) The report shall provide information on agreement-specific total
18 incentives used every two years for each agreement. The report shall
19 disclose (a) the identity of the taxpayer, (b) the qualified location or
20 locations, and (c) the total credits used and refunds approved during the
21 immediately preceding two years expressed as a single, aggregated total.
22 The incentive information required to be reported under this subsection
23 shall not be reported for the first year the taxpayer attains the
24 required employment and investment thresholds. The information on first-
25 year incentives used shall be combined with and reported as part of the
26 second year. Thereafter, the information on incentives used for
27 succeeding years shall be reported for each agreement every two years
28 containing information on two years of credits used and refunds approved.
29 The incentives used shall include incentives which have been approved by
30 the director or Tax Commissioner, as applicable, but not necessarily
31 received, during the previous two years.

1 (7) The report shall include an executive summary which shows
2 aggregate information for all agreements for which the information on
3 incentives used in subsection (6) of this section is reported as follows:

4 (a) The total incentives used by all taxpayers for agreements detailed in
5 subsection (6) of this section during the previous two years; (b) the
6 number of agreements; (c) the new jobs at the qualified location or
7 locations for which credits have been granted; (d) the average
8 compensation paid to employees in the state in the year of application
9 and for the new jobs at the qualified location or locations; and (e) the
10 total investment for which incentives were granted. The executive summary
11 shall summarize the number of states which grant investment tax credits,
12 job tax credits, sales and use tax refunds for qualified investment, and
13 personal property tax exemptions and the investment and employment
14 requirements under which they may be granted.

15 (8) No information shall be provided in the report or in
16 supplemental information that is protected by state or federal
17 confidentiality laws.

18 Sec. 5. Original sections 77-382, 77-385, and 77-5731, Reissue
19 Revised Statutes of Nebraska, and section 77-6837, Revised Statutes
20 Cumulative Supplement, 2020, are repealed.

21 Sec. 6. Since an emergency exists, this act takes effect when
22 passed and approved according to law.