

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 126

Introduced by Groene, 42.

Read first time January 06, 2017

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2912 and 77-5725, Revised Statutes Cumulative Supplement, 2016;
- 3 to change sunset dates under the Nebraska Job Creation and
- 4 Mainstreet Revitalization Act and the Nebraska Advantage Act; and to
- 5 repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2912, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 77-2912 There shall be no new applications filed under the Nebraska
4 Job Creation and Mainstreet Revitalization Act after December 31, 2020
5 ~~2022~~. All applications and all credits pending or approved before such
6 date shall continue in full force and effect, except that no credits
7 shall be allocated under section 77-2905, issued under section 77-2906,
8 or used on any tax return or similar filing after December 31, 2027.

9 Sec. 2. Section 77-5725, Revised Statutes Cumulative Supplement,
10 2016, is amended to read:

11 77-5725 (1) Applicants may qualify for benefits under the Nebraska
12 Advantage Act in one of six tiers:

13 (a) Tier 1, investment in qualified property of at least one million
14 dollars and the hiring of at least ten new employees. There shall be no
15 new project applications for benefits under this tier filed after
16 December 31, 2018 ~~2020~~. All complete project applications filed on or
17 before December 31, 2018 ~~2020~~, shall be considered by the Tax
18 Commissioner and approved if the project and taxpayer qualify for
19 benefits. Agreements may be executed with regard to completed project
20 applications filed on or before December 31, 2018 ~~2020~~. All project
21 agreements pending, approved, or entered into before such date shall
22 continue in full force and effect;

23 (b) Tier 2, (i) investment in qualified property of at least three
24 million dollars and the hiring of at least thirty new employees or (ii)
25 for a large data center project, investment in qualified property for the
26 data center of at least two hundred million dollars and the hiring for
27 the data center of at least thirty new employees. There shall be no new
28 project applications for benefits under this tier filed after December
29 31, 2018 ~~2020~~. All complete project applications filed on or before
30 December 31, 2018 ~~2020~~, shall be considered by the Tax Commissioner and
31 approved if the project and taxpayer qualify for benefits. Agreements may

1 be executed with regard to completed project applications filed on or
2 before December 31, 2018 ~~2020~~. All project agreements pending, approved,
3 or entered into before such date shall continue in full force and effect;

4 (c) Tier 3, the hiring of at least thirty new employees. There shall
5 be no new project applications for benefits under this tier filed after
6 December 31, 2018 ~~2020~~. All complete project applications filed on or
7 before December 31, 2018 ~~2020~~, shall be considered by the Tax
8 Commissioner and approved if the project and taxpayer qualify for
9 benefits. Agreements may be executed with regard to completed project
10 applications filed on or before December 31, 2018 ~~2020~~. All project
11 agreements pending, approved, or entered into before such date shall
12 continue in full force and effect;

13 (d) Tier 4, investment in qualified property of at least ten million
14 dollars and the hiring of at least one hundred new employees. There shall
15 be no new project applications for benefits under this tier filed after
16 December 31, 2018 ~~2020~~. All complete project applications filed on or
17 before December 31, 2018 ~~2020~~, shall be considered by the Tax
18 Commissioner and approved if the project and taxpayer qualify for
19 benefits. Agreements may be executed with regard to completed project
20 applications filed on or before December 31, 2018 ~~2020~~. All project
21 agreements pending, approved, or entered into before such date shall
22 continue in full force and effect;

23 (e) Tier 5, (i) investment in qualified property of at least thirty
24 million dollars or (ii) for the production of electricity by using one or
25 more sources of renewable energy to produce electricity for sale as
26 described in subdivision (1)(j) of section 77-5715, investment in
27 qualified property of at least twenty million dollars. Failure to
28 maintain an average number of equivalent employees as defined in section
29 77-5727 greater than or equal to the number of equivalent employees in
30 the base year shall result in a partial recapture of benefits. There
31 shall be no new project applications for benefits under this tier filed

1 after December 31, 2018 ~~2020~~. All complete project applications filed on
2 or before December 31, 2018 ~~2020~~, shall be considered by the Tax
3 Commissioner and approved if the project and taxpayer qualify for
4 benefits. Agreements may be executed with regard to completed project
5 applications filed on or before December 31, 2018 ~~2020~~. All project
6 agreements pending, approved, or entered into before such date shall
7 continue in full force and effect; and

8 (f) Tier 6, investment in qualified property of at least ten million
9 dollars and the hiring of at least seventy-five new employees or the
10 investment in qualified property of at least one hundred million dollars
11 and the hiring of at least fifty new employees. There shall be no new
12 project applications for benefits under this tier filed after December
13 31, 2018 ~~2020~~. All complete project applications filed on or before
14 December 31, 2018 ~~2020~~, shall be considered by the Tax Commissioner and
15 approved if the project and taxpayer qualify for benefits. Agreements may
16 be executed with regard to completed project applications filed on or
17 before December 31, 2018 ~~2020~~. All project agreements pending, approved,
18 or entered into before such date shall continue in full force and effect.

19 (2) When the taxpayer has met the required levels of employment and
20 investment contained in the agreement for a tier 1, tier 2, tier 4, tier
21 5, or tier 6 project, the taxpayer shall be entitled to the following
22 incentives:

23 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
24 5, or tier 6 project or a refund of one-half of all sales and use taxes
25 for a tier 1 project paid under the Local Option Revenue Act, the
26 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813
27 from the date of the application through the meeting of the required
28 levels of employment and investment for all purchases, including rentals,
29 of:

30 (i) Qualified property used as a part of the project;

31 (ii) Property, excluding motor vehicles, based in this state and

1 used in both this state and another state in connection with the project
2 except when any such property is to be used for fundraising for or for
3 the transportation of an elected official;

4 (iii) Tangible personal property by a contractor or repairperson
5 after appointment as a purchasing agent of the owner of the improvement
6 to real estate when such property is incorporated into real estate as a
7 part of a project. The refund shall be based on fifty percent of the
8 contract price, excluding any land, as the cost of materials subject to
9 the sales and use tax;

10 (iv) Tangible personal property by a contractor or repairperson
11 after appointment as a purchasing agent of the taxpayer when such
12 property is annexed to, but not incorporated into, real estate as a part
13 of a project. The refund shall be based on the cost of materials subject
14 to the sales and use tax that were annexed to real estate; and

15 (v) Tangible personal property by a contractor or repairperson after
16 appointment as a purchasing agent of the taxpayer when such property is
17 both (A) incorporated into real estate as a part of a project and (B)
18 annexed to, but not incorporated into, real estate as a part of a
19 project. The refund shall be based on fifty percent of the contract
20 price, excluding any land, as the cost of materials subject to the sales
21 and use tax; and

22 (b) A refund of all sales and use taxes for a tier 2, tier 4, tier
23 5, or tier 6 project or a refund of one-half of all sales and use taxes
24 for a tier 1 project paid under the Local Option Revenue Act, the
25 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on
26 the types of purchases, including rentals, listed in subdivision (a) of
27 this subsection for such taxes paid during each year of the entitlement
28 period in which the taxpayer is at or above the required levels of
29 employment and investment.

30 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier
31 4 project shall be entitled to a credit equal to three percent times the

1 average wage of new employees times the number of new employees if the
2 average wage of the new employees equals at least sixty percent of the
3 Nebraska average annual wage for the year of application. The credit
4 shall equal four percent times the average wage of new employees times
5 the number of new employees if the average wage of the new employees
6 equals at least seventy-five percent of the Nebraska average annual wage
7 for the year of application. The credit shall equal five percent times
8 the average wage of new employees times the number of new employees if
9 the average wage of the new employees equals at least one hundred percent
10 of the Nebraska average annual wage for the year of application. The
11 credit shall equal six percent times the average wage of new employees
12 times the number of new employees if the average wage of the new
13 employees equals at least one hundred twenty-five percent of the Nebraska
14 average annual wage for the year of application. For computation of such
15 credit:

16 (a) Average annual wage means the total compensation paid to
17 employees during the year at the project who are not base-year employees
18 and who are paid wages equal to at least sixty percent of the Nebraska
19 average weekly wage for the year of application, excluding any
20 compensation in excess of one million dollars paid to any one employee
21 during the year, divided by the number of equivalent employees making up
22 such total compensation;

23 (b) Average wage of new employees means the average annual wage paid
24 to employees during the year at the project who are not base-year
25 employees and who are paid wages equal to at least sixty percent of the
26 Nebraska average weekly wage for the year of application, excluding any
27 compensation in excess of one million dollars paid to any one employee
28 during the year; and

29 (c) Nebraska average annual wage means the Nebraska average weekly
30 wage times fifty-two.

31 (4) Any taxpayer who qualifies for a tier 6 project shall be

1 entitled to a credit equal to ten percent times the total compensation
2 paid to all employees, other than base-year employees, excluding any
3 compensation in excess of one million dollars paid to any one employee
4 during the year, employed at the project.

5 (5) Any taxpayer who has met the required levels of employment and
6 investment for a tier 2 or tier 4 project shall receive a credit equal to
7 ten percent of the investment made in qualified property at the project.
8 Any taxpayer who has met the required levels of investment and employment
9 for a tier 1 project shall receive a credit equal to three percent of the
10 investment made in qualified property at the project. Any taxpayer who
11 has met the required levels of investment and employment for a tier 6
12 project shall receive a credit equal to fifteen percent of the investment
13 made in qualified property at the project.

14 (6) The credits prescribed in subsections (3), (4), and (5) of this
15 section shall be allowable for compensation paid and investments made
16 during each year of the entitlement period that the taxpayer is at or
17 above the required levels of employment and investment.

18 (7) The credit prescribed in subsection (5) of this section shall
19 also be allowable during the first year of the entitlement period for
20 investment in qualified property at the project after the date of the
21 application and before the required levels of employment and investment
22 were met.

23 (8)(a) Property described in subdivisions (8)(c)(i) through (v) of
24 this section used in connection with a project or projects and acquired
25 by the taxpayer, whether by lease or purchase, after the date the
26 application was filed, shall constitute separate classes of property and
27 are eligible for exemption under the conditions and for the time periods
28 provided in subdivision (8)(b) of this section.

29 (b)(i) A taxpayer who has met the required levels of employment and
30 investment for a tier 4 project shall receive the exemption of property
31 in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer

1 who has met the required levels of employment and investment for a tier 6
2 project shall receive the exemption of property in subdivisions (8)(c)
3 (ii), (iii), (iv), and (v) of this section. Such property shall be
4 eligible for the exemption from the first January 1 following the end of
5 the year during which the required levels were exceeded through the ninth
6 December 31 after the first year property included in subdivisions (8)(c)
7 (ii), (iii), (iv), and (v) of this section qualifies for the exemption.

8 (ii) A taxpayer who has filed an application that describes a tier 2
9 large data center project or a project under tier 4 or tier 6 shall
10 receive the exemption of property in subdivision (8)(c)(i) of this
11 section beginning with the first January 1 following the acquisition of
12 the property. The exemption shall continue through the end of the period
13 property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of
14 this section qualifies for the exemption.

15 (iii) A taxpayer who has filed an application that describes a tier
16 2 large data center project or a tier 5 project that is sequential to a
17 tier 2 large data center project for which the entitlement period has
18 expired shall receive the exemption of all property in subdivision (8)(c)
19 of this section beginning any January 1 after the acquisition of the
20 property. Such property shall be eligible for exemption from the tax on
21 personal property from the January 1 preceding the first claim for
22 exemption approved under this subdivision through the ninth December 31
23 after the year the first claim for exemption is approved.

24 (iv) A taxpayer who has a project for an Internet web portal or a
25 data center and who has met the required levels of employment and
26 investment for a tier 2 project or the required level of investment for a
27 tier 5 project, taking into account only the employment and investment at
28 the web portal or data center project, shall receive the exemption of
29 property in subdivision (8)(c)(ii) of this section. Such property shall
30 be eligible for the exemption from the first January 1 following the end
31 of the year during which the required levels were exceeded through the

1 ninth December 31 after the first year any property included in
2 subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies
3 for the exemption.

4 (v) Such investment and hiring of new employees shall be considered
5 a required level of investment and employment for this subsection and for
6 the recapture of benefits under this subsection only.

7 (c) The following property used in connection with such project or
8 projects and acquired by the taxpayer, whether by lease or purchase,
9 after the date the application was filed shall constitute separate
10 classes of personal property:

11 (i) Turbine-powered aircraft, including turboprop, turbojet, and
12 turbofan aircraft, except when any such aircraft is used for fundraising
13 for or for the transportation of an elected official;

14 (ii) Computer systems, made up of equipment that is interconnected
15 in order to enable the acquisition, storage, manipulation, management,
16 movement, control, display, transmission, or reception of data involving
17 computer software and hardware, used for business information processing
18 which require environmental controls of temperature and power and which
19 are capable of simultaneously supporting more than one transaction and
20 more than one user. A computer system includes peripheral components
21 which require environmental controls of temperature and power connected
22 to such computer systems. Peripheral components shall be limited to
23 additional memory units, tape drives, disk drives, power supplies,
24 cooling units, data switches, and communication controllers;

25 (iii) Depreciable personal property used for a distribution
26 facility, including, but not limited to, storage racks, conveyor
27 mechanisms, forklifts, and other property used to store or move products;

28 (iv) Personal property which is business equipment located in a
29 single project if the business equipment is involved directly in the
30 manufacture or processing of agricultural products; and

31 (v) For a tier 2 large data center project or tier 6 project, any

1 other personal property located at the project.

2 (d) In order to receive the property tax exemptions allowed by
3 subdivision (8)(c) of this section, the taxpayer shall annually file a
4 claim for exemption with the Tax Commissioner on or before May 1. The
5 form and supporting schedules shall be prescribed by the Tax Commissioner
6 and shall list all property for which exemption is being sought under
7 this section. A separate claim for exemption must be filed for each
8 project and each county in which property is claimed to be exempt. A copy
9 of this form must also be filed with the county assessor in each county
10 in which the applicant is requesting exemption. The Tax Commissioner
11 shall determine whether a taxpayer is eligible to obtain exemption for
12 personal property based on the criteria for exemption and the eligibility
13 of each item listed for exemption and, on or before August 1, certify
14 such to the taxpayer and to the affected county assessor.

15 (9)(a) The investment thresholds in this section for a particular
16 year of application shall be adjusted by the method provided in this
17 subsection, except that the investment threshold for a tier 5 project
18 described in subdivision (1)(e)(ii) of this section shall not be
19 adjusted.

20 (b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier
21 5 projects described in subdivision (1)(e)(ii) of this section, beginning
22 October 1, 2006, and each October 1 thereafter, the average Producer
23 Price Index for all commodities, published by the United States
24 Department of Labor, Bureau of Labor Statistics, for the most recent
25 twelve available periods shall be divided by the Producer Price Index for
26 the first quarter of 2006 and the result multiplied by the applicable
27 investment threshold. The investment thresholds shall be adjusted for
28 cumulative inflation since 2006.

29 (c) For tier 6, beginning October 1, 2008, and each October 1
30 thereafter, the average Producer Price Index for all commodities,
31 published by the United States Department of Labor, Bureau of Labor

1 Statistics, for the most recent twelve available periods shall be divided
2 by the Producer Price Index for the first quarter of 2008 and the result
3 multiplied by the applicable investment threshold. The investment
4 thresholds shall be adjusted for cumulative inflation since 2008.

5 (d) For a tier 2 large data center project, beginning October 1,
6 2012, and each October 1 thereafter, the average Producer Price Index for
7 all commodities, published by the United States Department of Labor,
8 Bureau of Labor Statistics, for the most recent twelve available periods
9 shall be divided by the Producer Price Index for the first quarter of
10 2012 and the result multiplied by the applicable investment threshold.
11 The investment thresholds shall be adjusted for cumulative inflation
12 since 2012.

13 (e) If the resulting amount is not a multiple of one million
14 dollars, the amount shall be rounded to the next lowest one million
15 dollars.

16 (f) The investment thresholds established by this subsection apply
17 for purposes of project qualifications for all applications filed on or
18 after January 1 of the following year for all years of the project.
19 Adjustments do not apply to projects after the year of application.

20 Sec. 3. Original sections 77-2912 and 77-5725, Revised Statutes
21 Cumulative Supplement, 2016, are repealed.