

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 539

Introduced by Bohlke, 33; Wickersham, 49

Read first time January 19, 1999

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-27,187.01, 77-27,188, 77-4101, and 77-4103, Revised
3 Statutes Supplement, 1998; to define terms; to provide
4 for treatment of leased employees for certain tax
5 benefits; to harmonize provisions; to provide an
6 operative date; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-27,187.01, Revised Statutes
2 Supplement, 1998, is amended to read:

3 77-27,187.01. For purposes of the Employment Expansion
4 and Investment Incentive Act, unless the context otherwise
5 requires:

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

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

12 (3) Nebraska employee means an individual who is either a
13 resident or partial-year resident of Nebraska;

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

20 (5) Related taxpayers includes any corporations that are
21 part of a unitary business under the Nebraska Revenue Act of 1967
22 but are not part of the same corporate taxpayer, any business
23 entities that are not corporations but which would be a part of the
24 unitary business if they were corporations, and any business
25 entities if at least fifty percent of such entities are owned by
26 the same persons or related taxpayers and family members as defined
27 in the ownership attribution rules of the Internal Revenue Code of
28 1986, as amended;

1 ~~(5)~~ (6) Taxpayer means a corporate taxpayer or other
2 person subject to either an income tax imposed by the Nebraska
3 Revenue Act of 1967 or a franchise tax under Chapter 77, article
4 38, or exempt from such taxes under section 521 of the Internal
5 Revenue Code of 1986, as amended, or a partnership, limited
6 liability company, S corporation, or joint venture when all of the
7 partners, shareholders, or members are subject to or exempt from
8 such taxes; and

9 ~~(6)~~ (7) Year means the taxable year of the taxpayer.

10 Sec. 2. Section 77-27,188, Revised Statutes Supplement,
11 1998, is amended to read:

12 77-27,188. (1)(a) A credit against the taxes imposed by
13 the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer
14 engaged in a qualifying business as described in section 77-27,189
15 who increases the employment of such business in this state by two
16 new equivalent Nebraska employees and who makes an increased
17 investment in this state of at least seventy-five thousand dollars
18 during a taxable year.

19 (b) Any taxpayer who has been allowed a credit under
20 subdivision (1)(a) of this section during the preceding five
21 taxable years, not counting carryovers, shall be allowed a credit
22 for an increase in employment in this state by two new equivalent
23 Nebraska employees.

24 (2) Except as provided in subsection (3) of this section,
25 the amount of the credit shall be one thousand five hundred dollars
26 for each new equivalent Nebraska employee and one thousand dollars
27 for each seventy-five thousand dollars of increased investment.

28 (3) For any taxpayer described in subdivision (1)(a) of

1 this section which is also located within the boundaries of an
2 enterprise zone as defined and designated by the Department of
3 Economic Development pursuant to the Enterprise Zone Act, the
4 amount of the credit shall be:

5 (a) Four thousand five hundred dollars for each new
6 equivalent Nebraska employee and three thousand dollars for each
7 seventy-five thousand dollars of increased investment if at least
8 fifty percent of the new equivalent Nebraska employees of the
9 taxpayer reside within the boundaries of the enterprise zone; or

10 (b) Four thousand five hundred dollars for each new
11 equivalent Nebraska employee residing within the boundaries of the
12 enterprise zone, one thousand five hundred dollars for each new
13 equivalent Nebraska employee not residing within the boundaries of
14 the enterprise zone, and one thousand dollars for each seventy-five
15 thousand dollars of increased investment if less than fifty percent
16 of the new equivalent Nebraska employees of the taxpayer reside
17 within the boundaries of the enterprise zone.

18 The credit allowed to a taxpayer pursuant to this
19 subsection shall not exceed seventy-five thousand dollars in any
20 one tax year.

21 For purposes of this subdivision, employees residing
22 within the boundaries of an enterprise zone shall be construed to
23 mean employees residing within a county in which an enterprise zone
24 is located when the enterprise zone is not located in a city of the
25 primary or metropolitan class.

26 For purposes of this subdivision, an employee residing
27 within the enterprise zone shall mean an individual who is
28 domiciled within the enterprise zone for the entire pay period.

1 The failure of a taxpayer to maintain the continuous
2 employment of an employee residing in the enterprise zone or to
3 replace him or her with another employee residing within the
4 enterprise zone for the period of time set out in section
5 77-27,188.02 shall be deemed a failure to maintain the level of
6 investment and employment that created the credit for purposes of
7 section 77-27,188.02.

8 (4) The credit shall be applied as provided in section
9 77-27,188.01.

10 (5) Any taxpayer who has qualified for a credit in the
11 amount set out in subsection (3) of this section may elect to
12 receive either the amount as calculated pursuant to subsection (2)
13 or (3) of this section.

14 (6) An employee of a qualified employee leasing company
15 shall be considered to be an employee of the client-lessee for
16 purposes of this section if the employee performs services for the
17 client-lessee. A qualified employee leasing company shall provide
18 the Department of Revenue access to the records of employees leased
19 to the client-lessee.

20 Sec. 3. Section 77-4101, Revised Statutes Supplement,
21 1998, is amended to read:

22 77-4101. Sections 77-4101 to 77-4112 and section 5 of
23 this act shall be known and may be cited as the Employment and
24 Investment Growth Act.

25 Sec. 4. Section 77-4103, Revised Statutes Supplement,
26 1998, is amended to read:

27 77-4103. For purposes of the Employment and Investment
28 Growth Act, unless the context otherwise requires:

1 (1) Any term shall have the same meaning as used in
2 Chapter 77, article 27;

3 (2) Base year shall mean the year immediately preceding
4 the year during which the application was submitted;

5 (3) Base-year employee shall mean any individual who was
6 employed in Nebraska and subject to the Nebraska income tax on
7 compensation received from the taxpayer or its predecessors during
8 the base year and who is employed at the project;

9 (4) Compensation shall mean the wages and other payments
10 subject to withholding for federal income tax purposes;

11 (5) Entitlement period shall mean the year during which
12 the required increases in employment and investment were met or
13 exceeded, and the next six years;

14 (6) Equivalent employees shall mean the number of
15 employees computed by dividing the total hours paid in a year by
16 the product of forty times the number of weeks in a year;

17 (7) Investment shall mean the value of qualified property
18 incorporated into or used at the project. For qualified property
19 owned by the taxpayer, the value shall be the original cost of the
20 property. For qualified property rented by the taxpayer, the
21 average net annual rent shall be multiplied by the number of years
22 of the lease for which the taxpayer was originally bound, not to
23 exceed ten years or the end of the third year after the entitlement
24 period, whichever is earlier. The rental of land included in and
25 incidental to the leasing of a building shall not be excluded from
26 the computation;

27 (8) Motor vehicle shall mean any motor vehicle, trailer,
28 or semitrailer as defined in section 60-301 and subject to

1 licensing for operation on the highways;

2 (9) Nebraska employee shall mean an individual who is
3 either a resident or partial-year resident of Nebraska;

4 (10) Number of new employees shall mean the excess of the
5 number of equivalent employees employed at the project during a
6 year over the number of equivalent employees during the base year;

7 (11) Qualified business shall mean any business engaged
8 in the activities listed in subdivisions (b)(i) through (v) of this
9 subdivision or in the storage, warehousing, distribution,
10 transportation, or sale of tangible personal property. Qualified
11 business shall not include any business activity in which eighty
12 percent or more of the total sales are sales to the ultimate
13 consumer of food prepared for immediate consumption or are sales to
14 the ultimate consumer of tangible personal property which is not
15 (a) assembled, fabricated, manufactured, or processed by the
16 taxpayer or (b) used by the purchaser in any of the following
17 activities:

18 (i) The conducting of research, development, or testing
19 for scientific, agricultural, animal husbandry, food product, or
20 industrial purposes;

21 (ii) The performance of data processing,
22 telecommunication, insurance, or financial services. Financial
23 services for purposes of this subdivision shall only include
24 financial services provided by any financial institution subject to
25 tax under Chapter 77, article 38, or any person or entity licensed
26 by the Department of Banking and Finance or the Securities and
27 Exchange Commission;

28 (iii) The assembly, fabrication, manufacture, or

1 processing of tangible personal property;

2 (iv) The administrative management of any activities,
3 including headquarter facilities relating to such activities; or

4 (v) Any combination of the activities listed in this
5 subdivision;

6 (12) Qualified employee leasing company shall mean a
7 company which places all employees of a client-lessee on its
8 payroll and leases such employees to the client-lessee on an
9 ongoing basis for a fee and, by written agreement between the
10 employee leasing company and a client-lessee, grants to the
11 client-lessee input into the hiring and firing of the employees
12 leased to client-lessee;

13 (13) Qualified property shall mean any tangible property
14 of a type subject to depreciation, amortization, or other recovery
15 under the Internal Revenue Code of 1986, or the components of such
16 property, that will be located and used at the project. Qualified
17 property shall not include (a) aircraft, barges, motor vehicles,
18 railroad rolling stock, or watercraft or (b) property that is
19 rented by the taxpayer qualifying under the Employment and
20 Investment Growth Act to another person;

21 ~~(13)~~ (14) Related persons shall mean any corporations,
22 partnerships, limited liability companies, or joint ventures which
23 are or would otherwise be members of the same unitary group, if
24 incorporated, or any persons who are considered to be related
25 persons under either section 267(B) and (C) or section 707(B) of
26 the Internal Revenue Code of 1986;

27 ~~(14)~~ (15) Taxpayer shall mean any person subject to the
28 sales and use taxes and either an income tax imposed by the

1 Nebraska Revenue Act of 1967 or a franchise tax under sections
2 77-3801 to 77-3807, any corporation, partnership, limited liability
3 company, or joint venture that is or would otherwise be a member of
4 the same unitary group, if incorporated, which is, or whose
5 partners, members, or owners are, subject to such taxes, and any
6 other partnership, limited liability company, S corporation, or
7 joint venture when the partners, shareholders, or members are
8 subject to such taxes; and

9 ~~(15)~~ (16) Year shall mean the taxable year of the
10 taxpayer.

11 The changes made in this section by Laws 1997, LB 264,
12 apply to investments made or employment on or after January 1,
13 1997, and for all agreements in effect on or after January 1, 1997.

14 Sec. 5. An employee of a qualified employee leasing
15 company shall be considered to be an employee of the client-lessee
16 for purposes of the Employment and Investment Growth Act if the
17 employee performs services for the client-lessee. A qualified
18 employee leasing company shall provide the Department of Revenue
19 access to the records of employees leased to the client-lessee.

20 Sec. 6. This act becomes operative on January 1, 1999.

21 Sec. 7. Original sections 77-27,187.01, 77-27,188,
22 77-4101, and 77-4103, Revised Statutes Supplement, 1998, are
23 repealed.