

LEGISLATIVE BILL 270

Approved by the Governor May 29, 1987

Introduced by Chizek, 31; Ashford, 6; Korshoj, 16;
Hefner, 19; Abboud, 12

AN ACT relating to the Employment Expansion and Investment Incentive Act; to amend sections 77-27,187, 77-27,188, 77-27,189, 77-27,190, 77-27,191, and 77-27,193, Reissue Revised Statutes of Nebraska, 1943; to increase a tax credit as prescribed; to change provisions relating to the applicability of, eligibility for, calculation of, and limitations on the credit; to redefine a term; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 77-27,187, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,187. Sections 77-27,187 to 77-27,196 and sections 3 and 4 of this act shall be known and may be cited as the Employment Expansion and Investment Incentive Act.

Sec. 2. That section 77-27,188, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,188. (1)(a) There shall be allowed a ~~nonrefundable~~ credit against the ~~taxes income tax~~ imposed by the Nebraska Revenue Act of 1967 to any taxpayer engaged in a qualifying business as described in section 77-27,189 who increases the employment of such business in this state by ~~the equivalent of~~ two full-time employees and who makes an investment in this state of at least one hundred thousand dollars during a taxable year.

(b) Any taxpayer who has been allowed a credit under subdivision (1)(a) of this section during the preceding five taxable years, not counting carryovers, shall be allowed a credit for an increase in employment in this state by ~~the equivalent of~~ two full-time employees.

(2) The amount of the credit shall be one thousand five hundred dollars for each new employee and one thousand five hundred dollars for each one hundred

thousand dollars of investment.

(3) The credit shall be applied as provided in section 3 of this act. The amount of the credit, including amounts carried over from preceding taxable years, used in any taxable year shall not exceed fifty per cent of the taxpayer's income tax liability to this state. The credit shall be applied after all other nonrefundable credits have been applied and before the application of any refundable credits.

(4) Any amount of the credit that is not used during the taxable year in which such credit was first allowable may be carried over for five immediately succeeding taxable years. A credit carried over shall be used before any additional credit allowed in a current taxable year may be used.

Sec. 3. (1) The credit allowed under section 77-27,188 may be used to obtain a refund of sales and use taxes paid or against the income tax liability of the taxpayer.

(2) A claim for the credit may be filed quarterly for refund of the sales and use taxes paid, either directly or indirectly, after the filing of the income tax return for the taxable year in which the credit was first allowed.

(3) The credit may be used to obtain a refund of sales and use taxes paid before the end of the taxable year for which the credit was allowed, except that the amount refunded under this subsection shall not exceed the amount of the sales and use taxes paid, either directly or indirectly, by the taxpayer on the qualifying investment.

(4) For the purposes of subsections (2) and (3) of this section, the taxpayer shall be deemed to have paid indirectly any sales or use taxes paid by a contractor on tangible personal property incorporated into an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the Nebraska sales and use taxes paid on the materials, or the taxpayer, with the permission of the Tax Commissioner and a certification from the contractor that Nebraska sales and use taxes were paid on all materials, may presume that fifty per cent of the cost of the improvement was for materials incorporated on which the tax was paid.

(5) The credit shall be a nonrefundable credit when used against the income tax liability of the taxpayer. The credit shall be applied before any refundable credits are applied. The amount of the credit that may be used in any taxable year shall not

exceed fifty per cent of the income tax liability of the taxpayer reduced by all other nonrefundable credits.

(6) The credit that is not used against liabilities incurred in the taxable year in which such credit was first allowable may be carried over and used against the liabilities incurred in the five immediately succeeding taxable years. The credits carried over shall be used in the order in which they were first allowed and before any additional credit allowable in a current taxable year may be used.

(7) No claim for refund of sales and use taxes under this section may be filed prior to January 1, 1989.

Sec. 4. If the taxpayer does not maintain the level of investment and employment that created the credit for at least two years after the year for which the credit was first allowed:

(1) The taxpayer shall not be entitled to any further carryovers of unused credits; and

(2) The taxpayer shall repay to the state one-third of the amount of the credit used for each subsequent year that the taxpayer has not maintained the required level of investment and employment until the credit used is repaid in full.

Sec. 5. That section 77-27,189, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,189. (1) A qualifying business shall include a mean any business engaged in the activities listed in subdivisions (2)(a) to (g) of this section or in the storage, warehousing, distribution, transportation, or sale of tangible personal property, except that qualifying business shall not include any business activity in which eighty per cent or more of the total sales are sales to the ultimate consumer of tangible personal property which is not (1) assembled, fabricated, manufactured, or processed by the taxpayer or (2) used by the purchaser in any of the following activities:

(a) The assembly, fabrication, manufacture, or processing of tangible personal property;

(b) The storage, warehousing, distribution, transportation, or sale of tangible personal property;

(c) (e) The feeding or raising of livestock;

(d) (d) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, or industrial purposes;

(e) (e) The performance of data processing, telecommunication, insurance, or financial services;

(e) Farming or ranching;

(f) The administrative management or the headquarters of any of the activities listed in subdivisions (a) to (e) of this subsection subdivision or any activity excluded solely because of its retail sales; or

(g) Any combination of the activities listed in this subsection this section.

(2) A qualifying business shall not include any business in which eighty per cent or more of the total sales of the business are sales of tangible personal property to the ultimate user of the property for use in activities other than the activities listed in subsection (1) of this section.

Sec. 6. That section 77-27,190, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,190. (1) A taxpayer shall be deemed to have a new employee when the average number of Nebraska employees during a taxable year exceeds the average number of Nebraska employees during any each of the three preceding taxable years.

(2) The average number of Nebraska employees for a taxable year shall be determined by averaging the number of Nebraska employees on (a) the last day of the preceding taxable year, (b) the last day of each calendar quarter within the current taxable year, and (c) the last day of the current taxable year.

(3) If the taxpayer has part-time Nebraska employees or pays overtime, the number of Nebraska employees on a particular day shall be determined by converting the number of hours paid for the pay period including that particular day into a number of equivalent full-time jobs.

(3) (4) The number of hours comprising a full-time job shall be the business hours the taxpayer uses for other purposes such as benefit plans or labor relations. The number of hours comprising a full-time job shall be used for all periods when comparing average employment under the Employment Expansion and Investment Incentive Act.

(4) (5) Qualifying business employees who work within and without this state shall be considered only to the extent they are paid for work performed within this state.

(5) (6) The hours worked by any person considered an independent contractor or the employee of another taxpayer shall not be used in the computation of any averages under this section.

Sec. 7. That section 77-27,191, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,191. (1) A taxpayer shall be deemed to have made an investment in this state if the average investment in this state during the taxable year exceeds the average investment in this state during any each of the three preceding taxable years.

(2) The average investment in this state shall be the average of the value of all property used or available for use on the first day of the taxable year and the last day of the taxable year. To determine the value of property owned by the taxpayer, the tax basis before allowance for depreciation shall be used. To determine the value of property rented by the taxpayer, the annual rent of the property shall be multiplied by eight.

(3) Only investment in improvements to real property and tangible personal property that are depreciable under the Internal Revenue Code shall be considered.

(4) Vehicles, planes, or railroad rolling stock shall be excluded in determining the average investment under this section.

Sec. 8. That section 77-27,193, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,193. (1) A taxpayer with more than one business location in this state shall be entitled to a credit equal to the lesser of (a) the sum of the credits computed for the individual business locations or (b) the credit computed based on the total activities of the business in this state.

(2) The credit allowed to related taxpayers shall be the lesser of (a) the sum of the credits computed for each taxpayer or (b) the credit computed based on the total activities of all related taxpayers in this state.

(3) Related taxpayers shall include any corporations that are part of a unitary business under the Nebraska Revenue Act of 1967, any business entities that are not corporations but which would be a part of the unitary business if they were corporations, and any business entities if at least fifty per cent of such entities are owned by the same persons or related taxpayers and family members as defined in the ownership attribution rules of the Internal Revenue Code.

(4) For purposes of computing the statewide limitations in subdivisions (1)(b) and (2)(b) of this

section. the type of business being conducted shall be ignored.

Sec. 9. This act shall be operative for all taxable years beginning or deemed to begin on or after January 1, 1987.

Sec. 10. That original sections 77-27,187, 77-27,188, 77-27,189, 77-27,190, 77-27,191, and 77-27,193, Reissue Revised Statutes of Nebraska, 1943, are repealed.