

LEGISLATIVE BILL 539

Approved by the Governor May 5, 1999

Introduced by Bohlke, 33; Wickersham, 49

AN ACT relating to revenue and taxation; to amend section 77-4112, Reissue Revised Statutes of Nebraska, and sections 77-27,187.01, 77-27,188, 77-27,196.01, 77-4101, and 77-4103, Revised Statutes Supplement, 1998; to define terms; to provide for treatment of leased employees for certain tax benefits; to harmonize provisions; and to repeal the original sections.

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

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

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

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

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

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

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

(5) Related taxpayers includes any corporations that are part of a unitary business under the Nebraska Revenue Act of 1967 but are not part of the same corporate taxpayer, 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 percent 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 of 1986, as amended;

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

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

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

77-27,188. (1)(a) A credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed 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 two new equivalent Nebraska employees and who makes an increased investment in this state of at least seventy-five 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 two new equivalent Nebraska employees.

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

(3) For any taxpayer described in subdivision (1)(a) of this section which is also located within the boundaries of an enterprise zone as defined and designated by the Department of Economic Development pursuant to the Enterprise Zone Act, the amount of the credit shall be:

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

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

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

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

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

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

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

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

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

Sec. 3. Section 77-27,196.01, Revised Statutes Supplement, 1998, is amended to read:

77-27,196.01. (1) The changes made in sections 77-27,188, 77-27,188.02, 77-27,190, 77-27,192, 77-27,193, and 77-27,194 by Laws 1997, LB 886, shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 1998. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 1998, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

(2) The changes made in sections 77-27,187.01 and 77-27,188 by this legislative bill shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 1999. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 1999, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

Sec. 4. Section 77-4101, Revised Statutes Supplement, 1998, is amended to read:

77-4101. Sections 77-4101 to 77-4112 and section 6 of this act shall be known and may be cited as the Employment and Investment Growth Act.

Sec. 5. Section 77-4103, Revised Statutes Supplement, 1998, is amended to read:

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

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

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

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

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

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

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

(7) Investment shall mean the value of qualified property incorporated into or used at the project. For qualified property owned by the

taxpayer, the value shall be the original cost of the property. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation;

(8) Motor vehicle shall mean any motor vehicle, trailer, or semitrailer as defined in section 60-301 and subject to licensing for operation on the highways;

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

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

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

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

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

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

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

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

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

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

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

~~(14)~~ (15) Taxpayer shall mean any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners are, subject to such taxes, and any other partnership, limited liability company, S corporation, or joint venture when the partners, shareholders, or members are subject to such taxes; and

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

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

Sec. 6. An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of the Employment and Investment Growth Act if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the

Department of Revenue access to the records of employees leased to the client-lessee.

Sec. 7. Section 77-4112, Reissue Revised Statutes of Nebraska, is amended to read:

77-4112. (1) The changes made in sections 77-4103 to 77-4105 and 77-4107 by Laws 1988, LB 1234, shall become operative for all applications filed on and after January 1, 1988. For all applications filed prior to January 1, 1988, the provisions of the Employment and Investment Growth Act as they existed immediately prior to such date shall apply.

(2) Section 77-4113 and the changes made in section 77-4104 by Laws 1996, LB 1290, shall become operative for all applications filed on or after May 1, 1996.

(3) The changes made in sections 77-4101 and 77-4103 by this legislative bill and section 6 of this act shall become operative for any taxpayer with an agreement in effect on or after January 1, 1999. Such changes and section 6 of this act shall be applied on a consistent basis for determining benefits for tax years beginning, or deemed to begin, on and after January 1, 1999. For all benefit determinations in tax years beginning, or deemed to begin, prior to January 1, 1999, the provisions of the Employment and Investment Growth Act as they existed immediately prior to such date shall apply.

Sec. 8. Original section 77-4112, Reissue Revised Statutes of Nebraska, and sections 77-27,187.01, 77-27,188, 77-27,196.01, 77-4101, and 77-4103, Revised Statutes Supplement, 1998, are repealed.