

## LEGISLATIVE BILL 936

Approved by the Governor April 10, 2000

Introduced by Matzke, 47; Aguilar, 35; Baker, 44; Bourne, 8; Brashear, 4; Bromm, 23; Brown, 6; Bruning, 3; Byars, 30; Coordsen, 32; Crosby, 29; Cudaback, 36; Dickey, 18; Dierks, 40; Engel, 17; Hartnett, 45; Hudkins, 21; Jones, 43; Kremer, 34; Kristensen, 37; Lynch, 13; D. Pederson, 42; Price, 26; Quandahl, 31; Redfield, 12; Robak, 22; Schimek, 27; Schmitt, 41; Schrock, 38; Smith, 48; Stuhr, 24; Tyson, 19; Vrtiska, 1; Wehrbein, 2; Dw. Pedersen, 39; at the request of the Governor

AN ACT relating to revenue and taxation; to adopt the Rural Economic Opportunities Act.

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

Section 1. Sections 1 to 14 of this act shall be known and may be cited as the Rural Economic Opportunities Act.

Sec. 2. The Legislature finds and declares that:

(1) Population and economic growth in Nebraska has for many years been greater in counties with relatively large populations and economies than in most of Nebraska's less populated counties; and

(2) It is the policy of the state to make revisions in Nebraska's tax structure to encourage employment and business investment that will significantly and positively impact the economies of the state's small-sized and mid-sized counties.

Sec. 3. For purposes of the Rural Economic Opportunities Act:

(1) Any term defined in the Nebraska Revenue Act of 1967 and used in the Rural Economic Opportunities Act has the same meaning as in the Nebraska Revenue Act of 1967;

(2) Average annual total employment means the average total employment reported for the county of employment for the most recent calendar year reported as of July 1 by the Department of Labor;

(3) Base year means the year immediately before the year in which the application was submitted;

(4) Base-year employee means 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;

(5) Compensation means the wages and other payments subject to withholding for federal income tax purposes;

(6) County average annual wage means the most recent average annual wage paid by all employers in a county or in the state, whichever is lower, for the most recent calendar year reported as of July 1 by the Department of Labor. County average annual wage for a project located in more than one county means the county average annual wages for each county in which the project is located, multiplied by the total of the average annual total employment for each county in which the project is located, summing the products for all counties in which the project is located, then dividing the result by the average annual total employment for all counties in which the project is located;

(7) Entitlement period means the year during which the required increases in employment, wages, and investment were met or exceeded and the next six years;

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

(9) Investment, for qualified property owned by the taxpayer, means the original cost of the property. Investment, for qualified property rented by the taxpayer, means the average net annual rent 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 is included in the computation;

(10) Labor force means the total annual average county labor force for the most recent calendar year reported as of July 1 by the Department of Labor;

(11) Motor vehicle means any motor vehicle, trailer, or semitrailer as defined in section 60-301 and subject to registration for operation on the highways;

(12) Number of new employees means the number of equivalent employees at the project during the year minus the number of equivalent employees during the base year;

(13)(a) Qualified business means any business engaged in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business also means any business engaged 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 only includes services provided by 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 subdivisions (13)(a)(i) through (iv) of this section;

(b) Qualified business does not include (i) any business activity in which eighty percent or more of the total sales are (A) sales to the ultimate consumer of food prepared for immediate consumption or (B) sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or which is not used by the purchaser in any of the activities listed in subdivisions (13)(a)(i) through (v) of this section or (ii) a livestock operation. For purposes of this subdivision, livestock operation means the feeding or holding of beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock in buildings, lots, or pens;

(14) 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 client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

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

(16) Qualifying wage means the greater of one hundred twenty-five percent of the county average annual wage in the county or counties in which the project is located or one hundred percent of the regional average annual wage in the region or regions in which the project is located;

(17) Region means the following regions:

(a) Panhandle region, composed of the counties of Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux;

(b) Mid-plains region, composed of the counties of Arthur, Chase, Cherry, Dawson, Dundy, Frontier, Furnas, Gosper, Grant, Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson, Perkins, Red Willow, and Thomas;

(c) Central region, composed of the counties of Adams, Blaine, Buffalo, Clay, Custer, Franklin, Garfield, Greeley, Hall, Hamilton, Harlan, Howard, Kearney, Loup, Merrick, Nance, Nuckolls, Phelps, Sherman, Valley, Webster, and Wheeler;

(d) Northeast region, composed of the counties of Antelope, Boone, Boyd, Brown, Burt, Cedar, Colfax, Cuming, Dakota, Dixon, Dodge, Holt, Keya Paha, Knox, Madison, Pierce, Platte, Rock, Stanton, Thurston, and Wayne;

(e) Southeast region, composed of the counties of Butler, Fillmore, Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Polk, Richardson, Saline, Saunders, Seward, Thayer, and York;

(f) Omaha region, composed of the counties of Douglas, Sarpy, Cass, and Washington; and

(g) Lincoln region, composed of the county of Lancaster;

(18) Regional average annual wage, for a project located in one region, means the most recent average annual wage paid by all employers in the region for the most recent calendar year calculated by multiplying the average annual wage for each county in the region for the most recent calendar year

reported as of July 1 by the Department of Labor by the corresponding average annual total employment in each county, summing the products for all counties in the region, and then dividing the result by the average annual total employment of all counties in the region. Regional average annual wage, for a project located in more than one region, means the regional average annual wage for each region in which the project is located, multiplied by the total of the average annual total employment for each region in which the project is located, the product then divided by the sum of the average annual total employment for the regions;

(19) Related persons means 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 section 267(b) or (c) or 707(b) of the Internal Revenue Code;

(20) Taxpayer means any person subject to the sales and use taxes and an income tax imposed by the Nebraska Revenue Act of 1967; 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 tax; and any other partnership, limited liability company, subchapter S corporation, subchapter T cooperative, or joint venture when the partners, shareholders, or members are subject to such tax; and

(21) Year means the taxable year of the taxpayer.

Sec. 4. An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of the Rural Economic Opportunities 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. 5. (1) In order to use the incentives in the Rural Economic Opportunities Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment, wages, and investment for a qualified business in Nebraska;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and define a project;

(c) If more than one location within the state is involved, sufficient documentation to show that the employment, wages, and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with any other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision; and

(d) A nonrefundable application fee of five hundred dollars. The fee shall be deposited into the Rural Economic Opportunities Fund, which is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The application and all supporting information shall be confidential except for the name, location, and qualification level of approved projects and the information required to be reported by section 12 of this act.

(3) The Tax Commissioner shall approve the application only if it satisfactorily meets the following conditions:

(a) Defines a project in one or more qualified business activities in the state;

(b) Shows that the project will result in (i) the hiring of a number of new employees equal to at least one-half of one percent of the labor force in the county or counties in which the project will be located, (ii) the paying of annual wages to the number of new employees that will average at least the qualifying wage, and (iii)(A) for a county or counties with a labor force greater than three thousand, the investment in qualified property of at least one hundred thousand dollars times one-half of one percent of the labor force in the county or counties in which the project will be located rounded to the nearest whole number or (B) for a county or counties with a labor force of three thousand or less, the investment in qualified property of at least fifty thousand dollars times one-half of one percent of the labor force in the county or counties in which the project will be located rounded to the nearest whole number; and

(c) Contains plans for achieving the required levels of employment, wages, and investment for the project prior to the end of the second year

after the year in which the application is submitted and maintaining the required levels of employment, wages, and investment for the entitlement period.

(4) After approval, the taxpayer and Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Rural Economic Opportunities Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment, wages, and investment required by the act for the project based on the date of the application;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) That the required levels of employment, wages, and investment shall be achieved and maintained throughout the entitlement period or any incentives used will be subject to recapture.

(5) The incentives contained in section 7 of this act shall be in lieu of the tax credits allowed by sections 77-27,188 and 77-4105 for any project. Any employment, wages, or investment which is eligible for credits under the act shall be subtracted from the increases computed for determining the benefits under sections 77-27,188 and 77-4105.

(6) A taxpayer and the Tax Commissioner may enter into agreements for more than one project. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment, new wages, or new investment shall be included in more than one project for either the meeting of the employment, wages, or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, the taxpayer shall specify in which project the employment, wages, and investment belong.

Sec. 6. The following transactions or activities shall not create any credits or allow any benefits under the Rural Economic Opportunities Act:

(1) The acquisition of a business which is continued by the taxpayer and which was operated in this state during three hundred sixty-six days prior to the date of application or date of acquisition, whichever is later. All employees of the acquired business during such period shall be considered base-year employees, and the compensation paid during the base year or the year before acquisition, whichever is later, shall be the base-year compensation. Any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location to another when the business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such period shall be considered base-year employees;

(3) The purchase or lease of any property which was previously owned by the taxpayer or a related person. The first purchase by either the taxpayer or a related person shall be treated as investment if the property was first placed in service in this state after the date of application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of any benefit or the meeting of any required employment, wages, and investment levels under the agreement;

(5) Any purchase or lease of property from a related person, except that the taxpayer will be allowed any benefits under the act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the taxpayer; and

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose other than the reduction of taxes and does not result in increased economic activity in the state.

Sec. 7. Any taxpayer who qualifies for the incentives by adding the number of employees, wages, and investment required in section 5 of this act shall be entitled to:

(1) A credit equal to five percent of the amount by which the total compensation paid during the year exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees. For the

computation of such credit, average compensation means the total compensation paid at the project divided by the total number of equivalent employees at the project; and

(2) A credit equal to ten percent of the investment made in qualified property at the project.

The credits prescribed in subdivisions (1) and (2) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment, wages, and investment. The credits prescribed in subdivision (2) of this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment, wages, and investment are met.

Sec. 8. (1) The credits prescribed in section 7 of this act shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by the Nebraska Revenue Act of 1967.

(2) The credits may be used as allowed in subsection (1) of this section and shall be applied in the order in which they were first allowed. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(3) The credits may be carried over until fully used, except that credits may not be carried over more than three years after the end of the entitlement period.

Sec. 9. (1) If the taxpayer fails either to meet the required levels of employment, wages, or investment for the applicable project by the end of the second year after the end of the year the application was submitted for such project or to use such project in a qualified business at employment, wages, and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Rural Economic Opportunities Act shall be recaptured or disallowed.

(2) The recapture or disallowance shall be as follows:

(a) In the case of a taxpayer who failed to meet the required levels within the required time period, any reduction in the corporate income tax arising from the use of credits prescribed in section 7 of this act shall be deemed an underpayment of the income tax and shall be immediately due and payable; and

(b) In the case of a taxpayer who failed to maintain the project at the required levels of employment, wages, and investment for the entire entitlement period, any reduction in tax allowed because of the use of a credit allowed under section 7 of this act shall be partially recaptured from the taxpayer and any carryovers of credits shall be partially disallowed. One-seventh of the credits used shall be recaptured and one-seventh of the remaining carryovers shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment, wages, or investment.

(3) Any reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(4) Notwithstanding any other limitations contained in the laws of this state, collections of any taxes deemed to be underpayments by this section shall be allowed for a period of ten years after the signing of the agreement or three years after the end of the entitlement period, whichever is later.

(5) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the act unless the recapture was in error.

(6) The recapture required by this section shall not occur if the failure to maintain the required levels of employment, wages, or investment was caused by an act of God or national emergency.

Sec. 10. (1) The incentives allowed under the Rural Economic Opportunities Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a subchapter T cooperative, or an estate or trust may be distributed to the partners, members, shareholders, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or

beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 9 of this act; and

(b) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code.

(2) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer by the repayment of any benefits received either before or after the transfer.

(4) If a taxpayer operating a project and allowed a credit under the act dies and there is a credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

Sec. 11. Any complete application filed on or after the effective date of this act shall be considered a valid application on the date submitted for the purposes of the Rural Economic Opportunities Act.

Sec. 12. (1) The Tax Commissioner shall submit an annual report to the Legislature no later than June 30 of each year.

(2) The report shall state by industry group (a) the credits earned, (b) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (c) the number of jobs created, (d) the total number of employees employed by taxpayers at qualifying projects on the last day of the calendar quarter prior to the application date and the total number of employees employed by the taxpayers for the projects on subsequent reporting dates, (e) the expansion of capital investment, (f) the estimated wage levels of jobs created subsequent to the application date, (g) the total number of qualified applicants, (h) the projected future state revenue gains and losses, and (i) the credits outstanding.

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

Sec. 13. There shall be no project applications filed on or after July 1, 2004, except that all project applications and all project agreements pending, approved, or entered into before such date shall continue in full force and effect.

Sec. 14. The Tax Commissioner may adopt and promulgate all rules and regulations necessary to carry out the Rural Economic Opportunities Act.