

AMENDMENTS TO LB 1118

Introduced by Cornett

1 1. Insert the following new sections:

2 Sec. 4. Section 77-5705, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-5705 Base Except for a tier 5 project that is
5 sequential to a tier 2 large data center project, base year
6 means the year immediately preceding the year of application. For
7 a tier 5 project that is sequential to a tier 2 large data center
8 project, the base year means the last year of the tier 2 large
9 data center project entitlement period relating to direct sales tax
10 refunds.

11 Sec. 6. Section 77-5723, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 77-5723 (1) In order to utilize the incentives set
14 forth in the Nebraska Advantage Act, the taxpayer shall file
15 an application, on a form developed by the Tax Commissioner,
16 requesting an agreement with the Tax Commissioner.

17 (2) The application shall contain:

18 (a) A written statement describing the plan of employment
19 and investment for a qualified business in this state;

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

23 (c) If more than one location within this state is

1 involved, sufficient documentation to show that the employment and
2 investment at different locations are interdependent parts of the
3 plan. A headquarters shall be presumed to be interdependent with
4 each other location directly controlled by such headquarters. A
5 showing that the parts of the plan would be considered parts of
6 a unitary business for corporate income tax purposes shall not
7 be sufficient to show interdependence for the purposes of this
8 subdivision;

9 (d) A nonrefundable application fee of one thousand
10 dollars for a tier 1 project, two thousand five hundred dollars for
11 a tier 2, tier 3, or tier 5 project, five thousand dollars for a
12 tier 4 project, and ten thousand dollars for a tier 6 project. The
13 fee shall be credited to the Nebraska Incentives Fund; and

14 (e) A timetable showing the expected sales tax refunds
15 and what year they are expected to be claimed. The timetable shall
16 include both direct refunds due to investment and credits taken as
17 sales tax refunds as accurately as possible.

18 The application and all supporting information shall be
19 confidential except for the name of the taxpayer, the location of
20 the project, the amounts of increased employment and investment,
21 and the information required to be reported by sections 77-5731 and
22 77-5734.

23 (3) An application must be complete to establish the date
24 of the application. An application shall be considered complete
25 once it contains the items listed in subsection (2) of this
26 section, regardless of the Tax Commissioner's additional needs
27 pertaining to information or clarification in order to approve or

1 not approve the application.

2 (4) Once satisfied that the plan in the application
3 defines a project consistent with the purposes stated in the
4 Nebraska Advantage Act in one or more qualified business activities
5 within this state, that the taxpayer and the plan will qualify for
6 benefits under the act, and that the required levels of employment
7 and investment for the project will be met prior to the end of the
8 fourth year after the year in which the application was submitted
9 for a tier 1, tier 3, or tier 6 project or the end of the sixth
10 year after the year in which the application was submitted for
11 a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall
12 approve the application. For a tier 5 project that is sequential
13 to a tier 2 large data center project, the required level of
14 investment shall be met prior to the end of the fourth year after
15 the expiration of the tier 2 large data center project entitlement
16 period relating to direct sales tax refunds.

17 (5) After approval, the taxpayer and the Tax Commissioner
18 shall enter into a written agreement. The taxpayer shall agree
19 to complete the project, and the Tax Commissioner, on behalf of
20 the State of Nebraska, shall designate the approved plan of the
21 taxpayer as a project and, in consideration of the taxpayer's
22 agreement, agree to allow the taxpayer to use the incentives
23 contained in the Nebraska Advantage Act. The application, and
24 all supporting documentation, to the extent approved, shall be
25 considered a part of the agreement. The agreement shall state:

26 (a) The levels of employment and investment required by
27 the act for the project;

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

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

5 (d) The date the application was filed; and

6 (e) A requirement that the company update the Department
7 of Revenue annually on any changes in plans or circumstances which
8 affect the timetable of sales tax refunds as set out in the
9 application. If the company fails to comply with this requirement,
10 the Tax Commissioner may defer any pending sales tax refunds until
11 the company does comply.

12 (6) The incentives contained in section 77-5725 shall be
13 in lieu of the tax credits allowed by the Nebraska Advantage Rural
14 Development Act for any project. In computing credits under the
15 act, any investment or employment which is eligible for benefits
16 or used in determining benefits under the Nebraska Advantage Act
17 shall be subtracted from the increases computed for determining
18 the credits under section 77-27,188. New investment or employment
19 at a project location that results in the meeting or maintenance
20 of the employment or investment requirements, the creation of
21 credits, or refunds of taxes under the Employment and Investment
22 Growth Act shall not be considered new investment or employment
23 for purposes of the Nebraska Advantage Act. The use of carryover
24 credits under the Employment and Investment Growth Act, the Invest
25 Nebraska Act, the Nebraska Advantage Rural Development Act, or the
26 Quality Jobs Act shall not preclude investment and employment from
27 being considered new investment or employment under the Nebraska

1 Advantage Act. The use of property tax exemptions at the project
2 under the Employment and Investment Growth Act shall not preclude
3 investment not eligible for the property tax exemption from being
4 considered new investment under the Nebraska Advantage Act.

5 (7) A taxpayer and the Tax Commissioner may enter into
6 agreements for more than one project and may include more than
7 one project in a single agreement. The projects may be either
8 sequential or concurrent. A project may involve the same location
9 as another project. No new employment or new investment shall be
10 included in more than one project for either the meeting of the
11 employment or investment requirements or the creation of credits.
12 When projects overlap and the plans do not clearly specify, then
13 the taxpayer shall specify in which project the employment or
14 investment belongs.

15 (8) The taxpayer may request that an agreement be
16 modified if the modification is consistent with the purposes
17 of the act and does not require a change in the description of
18 the project. An agreement may not be modified to a tier that
19 would grant a higher level of benefits to the taxpayer or to
20 a tier 1 project. Once satisfied that the modification to the
21 agreement is consistent with the purposes stated in the act, the
22 Tax Commissioner and taxpayer may amend the agreement. For a tier 6
23 project, the taxpayer must agree to limit the project to qualified
24 activities allowable under tier 2 and tier 4.

25 2. On page 13, line 14, strike "at" through "of" and
26 insert "sequential to".

27 3. On page 28, line 24, after the second comma insert

1 "77-5705, 77-5723,".

2 4. Renumber the remaining sections accordingly.