

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 572

Introduced by Friesen, 34.

Read first time January 18, 2017

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 77-4209, Reissue Revised Statutes of Nebraska, and sections 77-5725
3 and 79-1001, Revised Statutes Cumulative Supplement, 2016; to
4 provide termination dates for the Property Tax Credit Act and the
5 Tax Equity and Educational Opportunities Support Act; to change
6 deadlines for applications under the Nebraska Advantage Act; and to
7 repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-4209, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-4209 (1) Sections 77-4209 to 77-4212 shall be known and may be
4 cited as the Property Tax Credit Act.

5 (2) The Property Tax Credit Act shall terminate on January 1, 2020.

6 Sec. 2. Section 77-5725, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 77-5725 (1) Applicants may qualify for benefits under the Nebraska
9 Advantage Act in one of six tiers:

10 (a) Tier 1, investment in qualified property of at least one million
11 dollars and the hiring of at least ten new employees. There shall be no
12 new project applications for benefits under this tier filed after
13 December 31, 2019 ~~2020~~. All complete project applications filed on or
14 before December 31, 2019 ~~2020~~, shall be considered by the Tax
15 Commissioner and approved if the project and taxpayer qualify for
16 benefits. Agreements may be executed with regard to completed project
17 applications filed on or before December 31, 2019 ~~2020~~. All project
18 agreements pending, approved, or entered into before such date shall
19 continue in full force and effect;

20 (b) Tier 2, (i) investment in qualified property of at least three
21 million dollars and the hiring of at least thirty new employees or (ii)
22 for a large data center project, investment in qualified property for the
23 data center of at least two hundred million dollars and the hiring for
24 the data center of at least thirty new employees. There shall be no new
25 project applications for benefits under this tier filed after December
26 31, 2019 ~~2020~~. All complete project applications filed on or before
27 December 31, 2019 ~~2020~~, shall be considered by the Tax Commissioner and
28 approved if the project and taxpayer qualify for benefits. Agreements may
29 be executed with regard to completed project applications filed on or
30 before December 31, 2019 ~~2020~~. All project agreements pending, approved,
31 or entered into before such date shall continue in full force and effect;

1 (c) Tier 3, the hiring of at least thirty new employees. There shall
2 be no new project applications for benefits under this tier filed after
3 December 31, 2019 ~~2020~~. All complete project applications filed on or
4 before December 31, 2019 ~~2020~~, shall be considered by the Tax
5 Commissioner and approved if the project and taxpayer qualify for
6 benefits. Agreements may be executed with regard to completed project
7 applications filed on or before December 31, 2019 ~~2020~~. All project
8 agreements pending, approved, or entered into before such date shall
9 continue in full force and effect;

10 (d) Tier 4, investment in qualified property of at least ten million
11 dollars and the hiring of at least one hundred new employees. There shall
12 be no new project applications for benefits under this tier filed after
13 December 31, 2019 ~~2020~~. All complete project applications filed on or
14 before December 31, 2019 ~~2020~~, shall be considered by the Tax
15 Commissioner and approved if the project and taxpayer qualify for
16 benefits. Agreements may be executed with regard to completed project
17 applications filed on or before December 31, 2019 ~~2020~~. All project
18 agreements pending, approved, or entered into before such date shall
19 continue in full force and effect;

20 (e) Tier 5, (i) investment in qualified property of at least thirty
21 million dollars or (ii) for the production of electricity by using one or
22 more sources of renewable energy to produce electricity for sale as
23 described in subdivision (1)(j) of section 77-5715, investment in
24 qualified property of at least twenty million dollars. Failure to
25 maintain an average number of equivalent employees as defined in section
26 77-5727 greater than or equal to the number of equivalent employees in
27 the base year shall result in a partial recapture of benefits. There
28 shall be no new project applications for benefits under this tier filed
29 after December 31, 2019 ~~2020~~. All complete project applications filed on
30 or before December 31, 2019 ~~2020~~, shall be considered by the Tax
31 Commissioner and approved if the project and taxpayer qualify for

1 benefits. Agreements may be executed with regard to completed project
2 applications filed on or before December 31, 2019 ~~2020~~. All project
3 agreements pending, approved, or entered into before such date shall
4 continue in full force and effect; and

5 (f) Tier 6, investment in qualified property of at least ten million
6 dollars and the hiring of at least seventy-five new employees or the
7 investment in qualified property of at least one hundred million dollars
8 and the hiring of at least fifty new employees. There shall be no new
9 project applications for benefits under this tier filed after December
10 31, 2019 ~~2020~~. All complete project applications filed on or before
11 December 31, 2019 ~~2020~~, shall be considered by the Tax Commissioner and
12 approved if the project and taxpayer qualify for benefits. Agreements may
13 be executed with regard to completed project applications filed on or
14 before December 31, 2019 ~~2020~~. All project agreements pending, approved,
15 or entered into before such date shall continue in full force and effect.

16 (2) When the taxpayer has met the required levels of employment and
17 investment contained in the agreement for a tier 1, tier 2, tier 4, tier
18 5, or tier 6 project, the taxpayer shall be entitled to the following
19 incentives:

20 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
21 5, or tier 6 project or a refund of one-half of all sales and use taxes
22 for a tier 1 project paid under the Local Option Revenue Act, the
23 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813
24 from the date of the application through the meeting of the required
25 levels of employment and investment for all purchases, including rentals,
26 of:

27 (i) Qualified property used as a part of the project;

28 (ii) Property, excluding motor vehicles, based in this state and
29 used in both this state and another state in connection with the project
30 except when any such property is to be used for fundraising for or for
31 the transportation of an elected official;

1 (iii) Tangible personal property by a contractor or repairperson
2 after appointment as a purchasing agent of the owner of the improvement
3 to real estate when such property is incorporated into real estate as a
4 part of a project. The refund shall be based on fifty percent of the
5 contract price, excluding any land, as the cost of materials subject to
6 the sales and use tax;

7 (iv) Tangible personal property by a contractor or repairperson
8 after appointment as a purchasing agent of the taxpayer when such
9 property is annexed to, but not incorporated into, real estate as a part
10 of a project. The refund shall be based on the cost of materials subject
11 to the sales and use tax that were annexed to real estate; and

12 (v) Tangible personal property by a contractor or repairperson after
13 appointment as a purchasing agent of the taxpayer when such property is
14 both (A) incorporated into real estate as a part of a project and (B)
15 annexed to, but not incorporated into, real estate as a part of a
16 project. The refund shall be based on fifty percent of the contract
17 price, excluding any land, as the cost of materials subject to the sales
18 and use tax; and

19 (b) A refund of all sales and use taxes for a tier 2, tier 4, tier
20 5, or tier 6 project or a refund of one-half of all sales and use taxes
21 for a tier 1 project paid under the Local Option Revenue Act, the
22 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on
23 the types of purchases, including rentals, listed in subdivision (a) of
24 this subsection for such taxes paid during each year of the entitlement
25 period in which the taxpayer is at or above the required levels of
26 employment and investment.

27 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier
28 4 project shall be entitled to a credit equal to three percent times the
29 average wage of new employees times the number of new employees if the
30 average wage of the new employees equals at least sixty percent of the
31 Nebraska average annual wage for the year of application. The credit

1 shall equal four percent times the average wage of new employees times
2 the number of new employees if the average wage of the new employees
3 equals at least seventy-five percent of the Nebraska average annual wage
4 for the year of application. The credit shall equal five percent times
5 the average wage of new employees times the number of new employees if
6 the average wage of the new employees equals at least one hundred percent
7 of the Nebraska average annual wage for the year of application. The
8 credit shall equal six percent times the average wage of new employees
9 times the number of new employees if the average wage of the new
10 employees equals at least one hundred twenty-five percent of the Nebraska
11 average annual wage for the year of application. For computation of such
12 credit:

13 (a) Average annual wage means the total compensation paid to
14 employees during the year at the project who are not base-year employees
15 and who are paid wages equal to at least sixty percent of the Nebraska
16 average weekly wage for the year of application, excluding any
17 compensation in excess of one million dollars paid to any one employee
18 during the year, divided by the number of equivalent employees making up
19 such total compensation;

20 (b) Average wage of new employees means the average annual wage paid
21 to employees during the year at the project who are not base-year
22 employees and who are paid wages equal to at least sixty percent of the
23 Nebraska average weekly wage for the year of application, excluding any
24 compensation in excess of one million dollars paid to any one employee
25 during the year; and

26 (c) Nebraska average annual wage means the Nebraska average weekly
27 wage times fifty-two.

28 (4) Any taxpayer who qualifies for a tier 6 project shall be
29 entitled to a credit equal to ten percent times the total compensation
30 paid to all employees, other than base-year employees, excluding any
31 compensation in excess of one million dollars paid to any one employee

1 during the year, employed at the project.

2 (5) Any taxpayer who has met the required levels of employment and
3 investment for a tier 2 or tier 4 project shall receive a credit equal to
4 ten percent of the investment made in qualified property at the project.
5 Any taxpayer who has met the required levels of investment and employment
6 for a tier 1 project shall receive a credit equal to three percent of the
7 investment made in qualified property at the project. Any taxpayer who
8 has met the required levels of investment and employment for a tier 6
9 project shall receive a credit equal to fifteen percent of the investment
10 made in qualified property at the project.

11 (6) The credits prescribed in subsections (3), (4), and (5) of this
12 section shall be allowable for compensation paid and investments made
13 during each year of the entitlement period that the taxpayer is at or
14 above the required levels of employment and investment.

15 (7) The credit prescribed in subsection (5) of this section shall
16 also be allowable during the first year of the entitlement period for
17 investment in qualified property at the project after the date of the
18 application and before the required levels of employment and investment
19 were met.

20 (8)(a) Property described in subdivisions (8)(c)(i) through (v) of
21 this section used in connection with a project or projects and acquired
22 by the taxpayer, whether by lease or purchase, after the date the
23 application was filed, shall constitute separate classes of property and
24 are eligible for exemption under the conditions and for the time periods
25 provided in subdivision (8)(b) of this section.

26 (b)(i) A taxpayer who has met the required levels of employment and
27 investment for a tier 4 project shall receive the exemption of property
28 in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer
29 who has met the required levels of employment and investment for a tier 6
30 project shall receive the exemption of property in subdivisions (8)(c)
31 (ii), (iii), (iv), and (v) of this section. Such property shall be

1 eligible for the exemption from the first January 1 following the end of
2 the year during which the required levels were exceeded through the ninth
3 December 31 after the first year property included in subdivisions (8)(c)
4 (ii), (iii), (iv), and (v) of this section qualifies for the exemption.

5 (ii) A taxpayer who has filed an application that describes a tier 2
6 large data center project or a project under tier 4 or tier 6 shall
7 receive the exemption of property in subdivision (8)(c)(i) of this
8 section beginning with the first January 1 following the acquisition of
9 the property. The exemption shall continue through the end of the period
10 property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of
11 this section qualifies for the exemption.

12 (iii) A taxpayer who has filed an application that describes a tier
13 2 large data center project or a tier 5 project that is sequential to a
14 tier 2 large data center project for which the entitlement period has
15 expired shall receive the exemption of all property in subdivision (8)(c)
16 of this section beginning any January 1 after the acquisition of the
17 property. Such property shall be eligible for exemption from the tax on
18 personal property from the January 1 preceding the first claim for
19 exemption approved under this subdivision through the ninth December 31
20 after the year the first claim for exemption is approved.

21 (iv) A taxpayer who has a project for an Internet web portal or a
22 data center and who has met the required levels of employment and
23 investment for a tier 2 project or the required level of investment for a
24 tier 5 project, taking into account only the employment and investment at
25 the web portal or data center project, shall receive the exemption of
26 property in subdivision (8)(c)(ii) of this section. Such property shall
27 be eligible for the exemption from the first January 1 following the end
28 of the year during which the required levels were exceeded through the
29 ninth December 31 after the first year any property included in
30 subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies
31 for the exemption.

1 (v) Such investment and hiring of new employees shall be considered
2 a required level of investment and employment for this subsection and for
3 the recapture of benefits under this subsection only.

4 (c) The following property used in connection with such project or
5 projects and acquired by the taxpayer, whether by lease or purchase,
6 after the date the application was filed shall constitute separate
7 classes of personal property:

8 (i) Turbine-powered aircraft, including turboprop, turbojet, and
9 turbofan aircraft, except when any such aircraft is used for fundraising
10 for or for the transportation of an elected official;

11 (ii) Computer systems, made up of equipment that is interconnected
12 in order to enable the acquisition, storage, manipulation, management,
13 movement, control, display, transmission, or reception of data involving
14 computer software and hardware, used for business information processing
15 which require environmental controls of temperature and power and which
16 are capable of simultaneously supporting more than one transaction and
17 more than one user. A computer system includes peripheral components
18 which require environmental controls of temperature and power connected
19 to such computer systems. Peripheral components shall be limited to
20 additional memory units, tape drives, disk drives, power supplies,
21 cooling units, data switches, and communication controllers;

22 (iii) Depreciable personal property used for a distribution
23 facility, including, but not limited to, storage racks, conveyor
24 mechanisms, forklifts, and other property used to store or move products;

25 (iv) Personal property which is business equipment located in a
26 single project if the business equipment is involved directly in the
27 manufacture or processing of agricultural products; and

28 (v) For a tier 2 large data center project or tier 6 project, any
29 other personal property located at the project.

30 (d) In order to receive the property tax exemptions allowed by
31 subdivision (8)(c) of this section, the taxpayer shall annually file a

1 claim for exemption with the Tax Commissioner on or before May 1. The
2 form and supporting schedules shall be prescribed by the Tax Commissioner
3 and shall list all property for which exemption is being sought under
4 this section. A separate claim for exemption must be filed for each
5 project and each county in which property is claimed to be exempt. A copy
6 of this form must also be filed with the county assessor in each county
7 in which the applicant is requesting exemption. The Tax Commissioner
8 shall determine whether a taxpayer is eligible to obtain exemption for
9 personal property based on the criteria for exemption and the eligibility
10 of each item listed for exemption and, on or before August 1, certify
11 such to the taxpayer and to the affected county assessor.

12 (9)(a) The investment thresholds in this section for a particular
13 year of application shall be adjusted by the method provided in this
14 subsection, except that the investment threshold for a tier 5 project
15 described in subdivision (1)(e)(ii) of this section shall not be
16 adjusted.

17 (b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier
18 5 projects described in subdivision (1)(e)(ii) of this section, beginning
19 October 1, 2006, and each October 1 thereafter, the average Producer
20 Price Index for all commodities, published by the United States
21 Department of Labor, Bureau of Labor Statistics, for the most recent
22 twelve available periods shall be divided by the Producer Price Index for
23 the first quarter of 2006 and the result multiplied by the applicable
24 investment threshold. The investment thresholds shall be adjusted for
25 cumulative inflation since 2006.

26 (c) For tier 6, beginning October 1, 2008, and each October 1
27 thereafter, the average Producer Price Index for all commodities,
28 published by the United States Department of Labor, Bureau of Labor
29 Statistics, for the most recent twelve available periods shall be divided
30 by the Producer Price Index for the first quarter of 2008 and the result
31 multiplied by the applicable investment threshold. The investment

1 thresholds shall be adjusted for cumulative inflation since 2008.

2 (d) For a tier 2 large data center project, beginning October 1,
3 2012, and each October 1 thereafter, the average Producer Price Index for
4 all commodities, published by the United States Department of Labor,
5 Bureau of Labor Statistics, for the most recent twelve available periods
6 shall be divided by the Producer Price Index for the first quarter of
7 2012 and the result multiplied by the applicable investment threshold.
8 The investment thresholds shall be adjusted for cumulative inflation
9 since 2012.

10 (e) If the resulting amount is not a multiple of one million
11 dollars, the amount shall be rounded to the next lowest one million
12 dollars.

13 (f) The investment thresholds established by this subsection apply
14 for purposes of project qualifications for all applications filed on or
15 after January 1 of the following year for all years of the project.
16 Adjustments do not apply to projects after the year of application.

17 Sec. 3. Section 79-1001, Revised Statutes Cumulative Supplement,
18 2016, is amended to read:

19 79-1001 (1) Sections 79-1001 to 79-1033 shall be known and may be
20 cited as the Tax Equity and Educational Opportunities Support Act.

21 (2) The Tax Equity and Educational Opportunities Support Act shall
22 terminate on January 1, 2020.

23 Sec. 4. Original section 77-4209, Reissue Revised Statutes of
24 Nebraska, and sections 77-5725 and 79-1001, Revised Statutes Cumulative
25 Supplement, 2016, are repealed.