

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 366

FINAL READING

Introduced by Brieese, 41; Brandt, 32; McCollister, 20.

Read first time January 13, 2021

Committee: Revenue

- 1 A BILL FOR AN ACT relating to the Nebraska Advantage Microenterprise Tax
- 2 Credit Act; to amend sections 77-5903, 77-5906, and 77-5907, Reissue
- 3 Revised Statutes of Nebraska, and section 77-5905, Revised Statutes
- 4 Cumulative Supplement, 2020; to redefine a term; to change the
- 5 termination date of the act; to change provisions relating to tax
- 6 credit amounts and reporting requirements; to provide for
- 7 applicability; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5903, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-5903 For purposes of the Nebraska Advantage Microenterprise Tax
4 Credit Act:

5 (1) Actively engaged in the operation of a microbusiness means
6 personal involvement on a continuous basis in the daily management and
7 operation of the business;

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

11 (3) Microbusiness means any business employing five or fewer
12 equivalent employees at the time of application. Microbusiness does not
13 include a farm or livestock operation unless (a) the person actively
14 engaged in the operation of the microbusiness has a net worth of not more
15 than five hundred thousand dollars, including any holdings by a spouse or
16 dependent, based on fair market value, or (b) the investment or
17 employment is in the processing or marketing of agricultural products,
18 aquaculture, agricultural tourism, or the production of fruits, herbs,
19 tree products, vegetables, tree nuts, dried fruits, organic crops, or
20 nursery crops;

21 (4) New employment means the amount by which the total compensation
22 plus the employer cost for health insurance for employees paid during the
23 tax year to or for employees who are Nebraska residents exceeds the total
24 compensation paid plus the employer cost for health insurance for
25 employees to or for employees who are Nebraska residents in the tax year
26 prior to application. New employment does not include compensation to any
27 employee that is in excess of one hundred fifty percent of the Nebraska
28 average weekly wage. Nebraska average weekly wage means the most recent
29 average weekly wage paid by all employers as reported by October 1 by the
30 Department of Labor;

31 (5) New investment means the increase during the tax year over the

1 year prior to the application in the applicant's (a) purchases of
2 buildings and depreciable personal property located in Nebraska, (b)
3 expenditures on repairs and maintenance on property located in Nebraska,
4 neither subdivision (a) or (b) of this subdivision to include vehicles
5 required to be registered for operation on the roads and highways of this
6 state, and (c) expenditures on advertising, legal, and professional
7 services. If the buildings or depreciable personal property is leased,
8 the amount of new investment shall be the increase in average net annual
9 rents multiplied by the number of years of the lease for which the
10 taxpayer is bound, not to exceed ten years;

11 (6) Related persons means (a) any corporation, partnership, limited
12 liability company, cooperative, including cooperatives exempt under
13 section 521 of the Internal Revenue Code of 1986, as amended, limited
14 cooperative association, or joint venture which is or would otherwise be
15 a member of the same unitary group, if incorporated, (b) an individual
16 and a corporation if more than fifty percent in value of the outstanding
17 stock of the corporation is owned, directly or indirectly, by or for such
18 individual, (c) a fiduciary of a trust and a corporation if more than
19 fifty percent in value of the outstanding stock of the corporation is
20 owned, directly or indirectly, by or for the trust or by or for a person
21 who is a grantor of the trust, (d) a corporation and a partnership if the
22 same persons own (i) more than fifty percent in value of the outstanding
23 stock of the corporation and (ii) more than fifty percent of the capital
24 interest, or the profits interest, in the partnership, (e) a subchapter S
25 corporation and another subchapter S corporation if the same persons own
26 more than fifty percent in value of the outstanding stock of each
27 corporation, (f) a subchapter S corporation and a C corporation if the
28 same persons own more than fifty percent in value of the outstanding
29 stock of each corporation, (g) a partnership and a person owning,
30 directly or indirectly, more than fifty percent of the capital interest,
31 or the profits interest, in such partnership, (h) two partnerships in

1 which the same persons own, directly or indirectly, more than fifty
2 percent of the capital interests or profits interests or any person who
3 is considered to be a related person under either section 267(b) and (c)
4 or section 707(b) of the Internal Revenue Code of 1986, as amended, and
5 (i) (b) any individual who is a spouse, parent, if the taxpayer is a
6 minor, or minor son or daughter of the taxpayer; and

7 (7) Taxpayer means any person subject to the income tax imposed by
8 the Nebraska Revenue Act of 1967, any corporation, partnership, limited
9 liability company, cooperative, including a cooperative exempt under
10 section 521 of the Internal Revenue Code of 1986, as amended, limited
11 cooperative association, or joint venture that is or would otherwise be a
12 member of the same unitary group, if incorporated, which is, or whose
13 partners, members, or owners representing an ownership interest of at
14 least ninety percent of such entity are, subject to such tax, and any
15 other partnership, limited liability company, subchapter S corporation,
16 cooperative, including a cooperative exempt under section 521 of the
17 Internal Revenue Code of 1986, as amended, limited cooperative
18 association, or joint venture when the partners, shareholders, or members
19 representing an ownership interest of at least ninety percent of such
20 entity are subject to such tax.

21 The changes made to this section by Laws 2008, LB 177, shall be
22 operative for all applications for benefits received on or after July 18,
23 2008.

24 The changes made to this section by this legislative bill shall
25 apply to all applications for benefits received on or after the effective
26 date of this act.

27 Sec. 2. Section 77-5905, Revised Statutes Cumulative Supplement,
28 2020, is amended to read:

29 77-5905 (1) If the Department of Revenue determines that an
30 application meets the requirements of section 77-5904 and that the
31 investment or employment is eligible for the credit and (a) the applicant

1 is actively engaged in the operation of the microbusiness or will be
2 actively engaged in the operation upon its establishment, (b) the
3 applicant will make new investment or employment in the microbusiness,
4 and (c) the new investment or employment will create new income or jobs,
5 the department shall approve the application and authorize tentative tax
6 credits to the applicant within the limits set forth in this section and
7 certify the amount of tentative tax credits approved for the applicant.
8 Applications for tax credits shall be considered in the order in which
9 they are received.

10 (2) The department may approve applications up to the adjusted limit
11 for each calendar year beginning January 1, 2006, through December 31,
12 ~~2032~~ 2022. After applications totaling the adjusted limit have been
13 approved for a calendar year, no further applications shall be approved
14 for that year. The adjusted limit in a given year is two million dollars
15 plus tentative tax credits that were not granted by the end of the
16 preceding year. Tax credits shall not be allowed for a taxpayer receiving
17 benefits under the Employment and Investment Growth Act, the Nebraska
18 Advantage Act, the Nebraska Advantage Rural Development Act, or the
19 Imagine Nebraska Act.

20 Sec. 3. Section 77-5906, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 77-5906 (1) Taxpayers shall be entitled to refundable tax credits
23 ~~for equal to twenty percent of the taxpayer's new investment or new~~
24 ~~employment in the microbusiness during the tax year. The tax credits~~
25 ~~shall be equal to:~~

26 (a) Twenty percent of the taxpayer's new investment; and

27 (b) Twenty percent of the taxpayer's new employment.

28 (2) The total amount of tax credits shall not ~~to~~ exceed the amount
29 of tentative tax credits approved by the department under section
30 77-5905.

31 (3) The taxpayer shall claim the tax credit by filing a form

1 developed by the Tax Commissioner and attaching the tentative tax credit
2 certification granted by the department. Tentative tax credits expire
3 after the end of the tax year following the year the tentative tax credit
4 was certified.

5 (4) The total lifetime tax credits claimed by any one taxpayer and
6 any related person under the Nebraska Advantage Microenterprise Tax
7 Credit Act shall be limited to twenty ten thousand dollars.

8 (5) Interest shall not be allowed on any taxes refunded under the
9 act.

10 (6) The changes made to this section by this legislative bill shall
11 apply to all applications for benefits received on or after the effective
12 date of this act.

13 Sec. 4. Section 77-5907, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 77-5907 (1) The Tax Commissioner shall prepare a report identifying
16 the following aggregate amounts for the previous calendar year: (a) ~~(1)~~
17 The amount of projected employment and investment anticipated by
18 taxpayers receiving tentative tax credits and the tentative tax credits
19 granted; (b) ~~(2)~~ the actual amount of employment and investment made by
20 taxpayers that were granted tentative tax credits in the previous
21 calendar year; (c) ~~(3)~~ the tax credits used; and (d) ~~(4)~~ the tentative
22 tax credits that expired. The report shall be issued on or before July
23 15, 2007, and each July 15 thereafter. The Department of Revenue shall,
24 on or before September 1 of each year, appear at a joint hearing of the
25 Appropriations Committee of the Legislature and the Revenue Committee of
26 the Legislature and present the report. Any supplemental information
27 requested by three or more committee members shall be presented within
28 thirty days after the request.

29 (2) Beginning with applications filed on or after the effective date
30 of this act, the report shall provide information on project-specific
31 total credits used every two years for each approved application and

1 shall disclose (a) the identity of the taxpayer, (b) the location or
2 locations where the taxpayer is earning credits, (c) the new investment
3 or new employment that was actually produced by the taxpayer to earn
4 credits, and (d) the total credits used during the immediately preceding
5 two years, expressed as a single, aggregated total.

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

8 Sec. 5. Original sections 77-5903, 77-5906, and 77-5907, Reissue
9 Revised Statutes of Nebraska, and section 77-5905, Revised Statutes
10 Cumulative Supplement, 2020, are repealed.