

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 84**

FINAL READING

Introduced by Bostelman, 23; Slama, 1; Hansen, B., 16; McCollister, 20;  
Sanders, 45.

Read first time January 07, 2021

Committee: Revenue

1 A BILL FOR AN ACT relating to taxation; to amend sections 50-1209 and  
2 77-6818, Revised Statutes Cumulative Supplement, 2020; to change  
3 provisions relating to tax incentive performance audits; to redefine  
4 a term under the Imagine Nebraska Act; and to repeal the original  
5 sections.

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

1 Section 1. Section 50-1209, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 50-1209 (1) Tax incentive performance audits shall be conducted by  
4 the office pursuant to this section on the following tax incentive  
5 programs:

- 6 (a) The Beginning Farmer Tax Credit Act;
- 7 (b) The ImagiNE Nebraska Act;
- 8 (c) The Nebraska Advantage Act;
- 9 (d) The Nebraska Advantage Microenterprise Tax Credit Act;
- 10 (e) The Nebraska Advantage Research and Development Act;
- 11 (f) The Nebraska Advantage Rural Development Act;
- 12 (g) The Nebraska Job Creation and Mainstreet Revitalization Act;
- 13 (h) The New Markets Job Growth Investment Act; and

14 (i) Any other tax incentive program created by the Legislature for  
15 the purpose of recruitment or retention of businesses in Nebraska. In  
16 determining whether a future tax incentive program is enacted for the  
17 purpose of recruitment or retention of businesses, the office shall  
18 consider legislative intent, including legislative statements of purpose  
19 and goals, and may also consider whether the tax incentive program is  
20 promoted as a business incentive by the Department of Economic  
21 Development or other relevant state agency.

22 (2) The office shall develop a schedule for conducting tax incentive  
23 performance audits and shall update the schedule annually. The schedule  
24 shall ensure that each tax incentive program is reviewed at least once  
25 every five years.

26 (3) Each tax incentive performance audit conducted by the office  
27 pursuant to this section shall include the following:

28 (a) An analysis of whether the tax incentive program is meeting the  
29 following goals:

- 30 (i) Strengthening the state's economy overall by:
  - 31 (A) Attracting new business to the state;

1 (B) Expanding existing businesses;

2 (C) Increasing employment, particularly employment of full-time  
3 workers. The analysis shall consider whether the job growth in those  
4 businesses receiving tax incentives is at least ten percent above  
5 industry averages;

6 (D) Creating high-quality jobs; and

7 (E) Increasing business investment;

8 (ii) Revitalizing rural areas and other distressed areas of the  
9 state;

10 (iii) Diversifying the state's economy and positioning Nebraska for  
11 the future by stimulating entrepreneurial firms, high-tech firms, and  
12 renewable energy firms; and

13 (iv) Any other program-specific goals found in the statutes for the  
14 tax incentive program being evaluated;

15 (b) An analysis of the economic and fiscal impacts of the tax  
16 incentive program. The analysis may take into account the following  
17 considerations in addition to other relevant factors:

18 (i) The costs per full-time worker. When practical and applicable,  
19 such costs shall be considered in at least the following two ways:

20 (A) By an estimation including the minimum investment required to  
21 qualify for benefits; and

22 (B) By an estimation including all investment;

23 (ii) The extent to which the tax incentive changes business  
24 behavior;

25 (iii) The results of the tax incentive for the economy of Nebraska  
26 as a whole. This consideration includes both direct and indirect impacts  
27 generally and any effects on other Nebraska businesses; and

28 (iv) A comparison to the results of other economic development  
29 strategies with similar goals, other policies, or other incentives;

30 (c) An assessment of whether adequate protections are in place to  
31 ensure the fiscal impact of the tax incentive does not increase

1 substantially beyond the state's expectations in future years;

2 (d) An assessment of the fiscal impact of the tax incentive on the  
3 budgets of local governments, if applicable; and

4 (e) Recommendations for any changes to statutes or rules and  
5 regulations that would allow the tax incentive program to be more easily  
6 evaluated in the future, including changes to data collection, reporting,  
7 sharing of information, and clarification of goals.

8 (4) For purposes of this section:

9 (a) Distressed area means an area of substantial unemployment as  
10 determined by the Department of Labor pursuant to the Nebraska Workforce  
11 Innovation and Opportunity Act;

12 (b) Full-time worker means an individual (i) who usually works  
13 thirty-five hours per week or more, (ii) whose employment is reported to  
14 the Department of Labor on two consecutive quarterly wage reports, and  
15 (iii) who earns wages equal to or exceeding the state minimum wage;

16 (c) High-quality job means a job that:

17 (i) Averages at least thirty-five hours of employment per week;

18 (ii) Is reported to the Department of Labor on two consecutive  
19 quarterly wage reports; and

20 (iii) Earns wages that are at least ten percent higher than the  
21 statewide industry sector average and that equal or exceed:

22 (A) One hundred ten percent of the Nebraska average weekly wage if  
23 the job is in a county with a population of less than one hundred  
24 thousand inhabitants; or

25 (B) One hundred twenty percent of the Nebraska average weekly wage  
26 if the job is in a county with a population of one hundred thousand  
27 inhabitants or more;

28 (d) High-tech firm means a person or unitary group that has a  
29 location with any of the following four-digit code designations under the  
30 North American Industry Classification System as assigned by the  
31 Department of Labor: 2111, 3254, 3341, 3342, 3344, 3345, 3364, 5112,

1 5173, 5179, 5182, 5191, 5413, 5415, or 5417;

2 (e) Nebraska average weekly wage means the most recent average  
3 weekly wage paid by all employers in all counties in Nebraska as reported  
4 by the Department of Labor by October 1 of each year;

5 (f) New business means a person or unitary group participating in a  
6 tax incentive program that did not pay income taxes or wages in the state  
7 more than two years prior to submitting an application under the tax  
8 incentive program. For any tax incentive program without an application  
9 process, new business means a person or unitary group participating in  
10 the program that did not pay income taxes or wages in the state more than  
11 two years prior to the first day of the first tax year for which a tax  
12 benefit was earned;

13 (g) Renewable energy firm means a person or unitary group that has a  
14 location with any of the following six-digit code designations under the  
15 North American Industry Classification System as assigned by the  
16 Department of Labor: 111110, 111120, 111130, 111140, 111150, 111160,  
17 111191, 111199, 111211, 111219, 111310, 111320, 111331, 111332, 111333,  
18 111334, 111335, 111336, 111339, 111411, 111419, 111930, 111991, 113310,  
19 221111, 221113, 221114, 221115, 221116, 221117, 221118, 221330, 237130,  
20 237210, 237990, 325193, 325199, 331512, 331513, 331523, 331524, 331529,  
21 332111, 332112, 333414, 333415, 333511, 333611, 333612, 333613, 334519,  
22 485510, 541330, 541360, 541370, 541620, 541690, 541713, 541714, 541715,  
23 561730, or 562213;

24 (h) Rural area means any village or city of the second class in this  
25 state or any county in this state with fewer than twenty-five thousand  
26 residents; and

27 (i) Unitary group has the same meaning as in section 77-2734.04.

28 Sec. 2. Section 77-6818, Revised Statutes Cumulative Supplement,  
29 2020, is amended to read:

30 77-6818 (1) Qualified location means a location at which the  
31 majority of the business activities conducted are within one or more of

1 the following NAICS codes or the following descriptions:

2 (a) Manufacturing - 31, 32, or 33, including pre-production  
3 services;

4 (b) Testing Laboratories - 541380;

5 (c) Rail Transportation - 482;

6 (d) Truck Transportation - 484;

7 (e) Insurance Carriers - 5241;

8 (f) Wired Telecommunications Carriers - 517311;

9 (g) Wireless Telecommunications Carriers (except Satellite) -  
10 517312;

11 (h) Telemarketing Bureaus and Other Contact Centers - 561422;

12 (i) Data Processing, Hosting, and Related Services - 518210;

13 (j) Computer Facilities Management Services - 541513;

14 (k) Warehousing and Storage - 4931;

15 (l) The administrative management of the taxpayer's activities,  
16 including headquarter facilities relating to such activities, or the  
17 administrative management of any of the activities of any business entity  
18 or entities in which the taxpayer or a group of its owners hold any  
19 direct or indirect ownership interest of at least ten percent, including  
20 headquarter facilities relating to such activities;

21 (m) Logistics Facilities - Portions of NAICS 488210, 488310, and  
22 488490 dealing with independently operated trucking terminals,  
23 independently operated railroad and railway terminals, and waterfront  
24 terminal and port facility operations;

25 (n) Services provided on aircraft brought into this state by an  
26 individual who is a resident of another state or any other person who has  
27 a business location in another state when the aircraft is not to be  
28 registered or based in this state and will not remain in this state more  
29 than ten days after the service is completed;

30 (o) The conducting of research, development, or testing, or any  
31 combination thereof, for scientific, agricultural, animal husbandry, food

1 product, industrial, or technology purposes;

2 (p) The production of electricity by using one or more sources of  
3 renewable energy to produce electricity for sale. For purposes of this  
4 subdivision, sources of renewable energy includes, but is not limited to,  
5 wind, solar, energy storage, geothermal, hydroelectric, biomass, nuclear,  
6 and transmutation of elements;

7 (q) Computer Systems Design and Related Services - 5415; or

8 (r) The performance of financial services. For purposes of this  
9 subdivision, financial services includes only financial services provided  
10 by any financial institution subject to tax under Chapter 77, article 38,  
11 or any person or entity licensed by the Department of Banking and Finance  
12 or the federal Securities and Exchange Commission.

13 (2)(a) Qualified location also includes any other business location  
14 if at least seventy-five percent of the revenue derived at the location  
15 is from sales to customers who are not related persons which are  
16 delivered or provided from the qualified location to a location that is  
17 not within Nebraska according to the sourcing rules in subsections (2)  
18 and (3) of section 77-2734.14. Intermediate sales to related persons are  
19 included as sales to customers delivered or provided to a location  
20 outside Nebraska if the related person delivers or provides the goods or  
21 services to a location outside Nebraska. Even if a location meets the  
22 seventy-five percent requirement of this subdivision, such location shall  
23 not constitute a qualified location under this subdivision if the  
24 majority of the business activities conducted at such location are within  
25 any of the following NAICS codes or any combination thereof:

26 (i) Agriculture, Forestry, Fishing and Hunting - 11;

27 (ii) Transportation and Warehousing - 48-49;

28 (iii) Information - 51;

29 (iv) Utilities - 22;

30 (v) Mining, Quarrying, and Oil and Gas Extraction - 21;

31 (vi) Public Administration - 92; or

1 (vii) Construction - 23.

2 (b) The director may adopt and promulgate rules and regulations  
3 establishing an alternative method in circumstances in which subdivision  
4 (2)(a) of this section does not accurately reflect the out-of-state sales  
5 taking place at locations within Nebraska for a particular industry.

6 (3) The determination of the majority of the business activities  
7 shall be made based on the number of employees working in the respective  
8 business activities. The director may adopt and promulgate rules and  
9 regulations establishing an alternative method in circumstances in which  
10 other factors provide a better reflection of business activities.

11 (4) The delineation of the types of business activities which enable  
12 a location to constitute a qualified location is based on the state's  
13 intention to attract certain types of business activities and to  
14 responsibly accomplish the purposes of the Imagine Nebraska Act by  
15 directing the state's incentive capabilities towards business activities  
16 which, due to their national nature, could locate outside of Nebraska and  
17 which therefore would, through the use of incentives, be motivated to  
18 locate in Nebraska. By listing specific types of business activities in  
19 subsection (1) of this section, the state has determined such business  
20 activities by their nature meet these objectives. By specifying the  
21 national nature of a taxpayer's revenue in subsection (2) of this  
22 section, the state has determined that certain other types of business  
23 activities can meet these objectives.

24 Sec. 3. Original sections 50-1209 and 77-6818, Revised Statutes  
25 Cumulative Supplement, 2020, are repealed.