

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 546

Introduced by Watermeier, 1.

Read first time January 18, 2017

Committee:

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-5706, 77-5708, 77-5710, 77-5714, 77-5717, 77-5719.01, and
3 77-5724, Reissue Revised Statutes of Nebraska, and sections
4 77-27,144, 77-5701, 77-5703, 77-5715, 77-5723, 77-5725, 77-5726,
5 77-5727, 77-5728, 77-5731, and 77-5734, Revised Statutes Cumulative
6 Supplement, 2016; to change the Nebraska Advantage Act as
7 prescribed; to harmonize provisions; to repeal the original
8 sections; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-27,144, Revised Statutes Cumulative
2 Supplement, 2016, is amended to read:

3 77-27,144 (1) The Tax Commissioner shall collect the tax imposed by
4 any incorporated municipality concurrently with collection of a state tax
5 in the same manner as the state tax is collected. The Tax Commissioner
6 shall remit monthly the proceeds of the tax to the incorporated
7 municipalities levying the tax, after deducting the amount of refunds
8 made and three percent of the remainder to be credited to the Municipal
9 Equalization Fund.

10 (2) Deductions for a refund made pursuant to section 77-4105,
11 77-4106, 77-5725, or 77-5726 or section 19 or 21 of this act shall be
12 delayed for one year after the refund has been made to the taxpayer. The
13 Department of Revenue shall notify the municipality liable for a refund
14 exceeding one thousand five hundred dollars of the pending refund, the
15 amount of the refund, and the month in which the deduction will be made
16 or begin, except that if the amount of a refund claimed under section
17 77-4105, 77-4106, 77-5725, or 77-5726 or section 19 or 21 of this act
18 exceeds twenty-five percent of the municipality's total sales and use tax
19 receipts, net of any refunds or sales tax collection fees, for the
20 municipality's prior fiscal year, the department shall deduct the refund
21 over the period of one year in equal monthly amounts beginning after the
22 one-year notification period required by this subsection. This subsection
23 applies to refunds owed by cities of the first class, cities of the
24 second class, and villages. This subsection applies to refunds beginning
25 January 1, 2014.

26 (3) The Tax Commissioner shall keep full and accurate records of all
27 money received and distributed under the provisions of the Local Option
28 Revenue Act. When proceeds of a tax levy are received but the identity of
29 the incorporated municipality which levied the tax is unknown and is not
30 identified within six months after receipt, the amount shall be credited
31 to the Municipal Equalization Fund. The municipality may request the

1 names and addresses of the retailers which have collected the tax as
2 provided in subsection (13) of section 77-2711 and may certify an
3 individual to request and review confidential sales and use tax returns
4 and sales and use tax return information as provided in subsection (14)
5 of section 77-2711.

6 Sec. 2. Section 77-5701, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 77-5701 Sections 77-5701 to 77-5735 and sections 5, 10, 12, 13, 16,
9 19, 21, 23, and 27 of this act shall be known and may be cited as the
10 Nebraska Advantage Act.

11 Sec. 3. Section 77-5703, Revised Statutes Cumulative Supplement,
12 2016, is amended to read:

13 77-5703 For purposes of the Nebraska Advantage Act, the definitions
14 found in sections 77-5704 to 77-5721 and sections 5, 10, 12, and 13 of
15 this act shall be used.

16 Sec. 4. Section 77-5706, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 77-5706 Base-year employee means any individual who was employed in
19 Nebraska and subject to the Nebraska income tax on compensation received
20 from the taxpayer or its predecessors during the base year and who is
21 employed at the project or qualified location.

22 Sec. 5. Development region means one of twelve regions in which all
23 counties in the region share a community of economic interest and labor
24 markets. The development regions are as follows:

25 (1) The counties of Clay, Gage, Fillmore, Jefferson, Johnson,
26 Nemaha, Nuckolls, Pawnee, Richardson, Saline, and Thayer;

27 (2) The counties of Cass, Otoe, and Sarpy;

28 (3) Lancaster County;

29 (4) Douglas County;

30 (5) The counties of Boone, Butler, Colfax, Hamilton, Merrick, Nance,
31 Platte, Polk, Saunders, Seward, and York;

1 (6) The counties of Burt, Cedar, Dakota, Dixon, Dodge, Thurston, and
2 Washington;

3 (7) The counties of Antelope, Cuming, Knox, Madison, Pierce,
4 Stanton, and Wayne;

5 (8) The counties of Blaine, Brown, Boyd, Cherry, Custer, Garfield,
6 Greeley, Holt, Howard, Keya Paha, Loup, Sherman, Rock, Valley, and
7 Wheeler;

8 (9) The counties of Buffalo and Hall;

9 (10) The counties of Adams, Franklin, Harlan, Kearney, Phelps, and
10 Webster;

11 (11) The counties of Arthur, Chase, Dawson, Dundy, Frontier, Furnas,
12 Gosper, Hayes, Hitchcock, Hooker, Keith, Logan, Lincoln, McPherson,
13 Perkins, Red Willow, and Thomas; and

14 (12) The counties of Banner, Box Butte, Cheyenne, Dawes, Deuel,
15 Garden, Grant, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux.

16 Sec. 6. Section 77-5708, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 77-5708 Entitlement period, for a tier 1 or tier 3 agreement
19 project, means the year during which the required increases in employment
20 and investment were met or exceeded and each year thereafter until the
21 end of the ninth year following the year of application or the sixth year
22 after the year the required increases were met or exceeded, whichever is
23 sooner. Entitlement period, for a tier 2, tier 4, or tier 5 agreement
24 project, means the year during which the required increases in employment
25 and investment were met or exceeded and each year thereafter until the
26 end of the sixth year after the year the required increases were met or
27 exceeded. Entitlement period, for a tier 6 agreement project, means the
28 year during which the required increases in employment and investment
29 were met or exceeded and each year thereafter until the end of the ninth
30 year after the year the required increases were met or exceeded.

31 Sec. 7. Section 77-5710, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 77-5710 (1) For applications filed before January 1, 2018,
3 investment ~~Investment~~ means the value of qualified property incorporated
4 into or used at the project. For qualified property owned by the
5 taxpayer, the value shall be the original cost of the property. For
6 qualified property rented by the taxpayer, the average net annual rent
7 shall be multiplied by the number of years of the lease for which the
8 taxpayer was originally bound, not to exceed ten years. The rental of
9 land included in and incidental to the leasing of a building shall not be
10 excluded from the computation.

11 (2) For applications filed on or after January 1, 2018, investment
12 means the value of qualified property incorporated into or used at all
13 qualified locations in Nebraska or in the development region, if
14 applicable. For qualified property owned by the taxpayer, the value is
15 the original cost of the property. For qualified property rented by the
16 taxpayer, the value is the average net annual rent multiplied by the
17 number of years of the lease for which the taxpayer was originally bound,
18 not to exceed ten years. The rental of land included in and incidental to
19 the leasing of a building is not excluded from the computation.
20 Telecommunications infrastructure within the state or development region,
21 as applicable, can be investment even if it is not located at a qualified
22 location if it is connected to a qualified location.

23 Sec. 8. Section 77-5714, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 77-5714 (1) For new applications filed before January 1, 2018:

26 (a) ~~(1)~~ Number of new employees, for a tier 1, tier 2, tier 3, or
27 tier 4 project, means the number of equivalent employees that are
28 employed at the project during a year that are in excess of the number of
29 equivalent employees during the base year, not to exceed the number of
30 equivalent employees employed at the project during a year who are not
31 base-year employees and who are paid wages at a rate equal to at least

1 sixty percent of the Nebraska average weekly wage for the year of
2 application; -

3 (b) ~~(2)~~ Number of new employees, for a tier 6 project, means the
4 number of equivalent employees that are employed at the project during a
5 year that are in excess of the number of equivalent employees during the
6 base year, not to exceed the number of equivalent employees employed at
7 the project during a year who are not base-year employees and who are
8 paid at a rate equal to or greater than the tier 6 weekly required
9 compensation for the year of application; -

10 (c) ~~(3)~~ Teleworkers working for wages or salaries in Nebraska from
11 their residences for a taxpayer on tasks interdependent with the work
12 performed at the project shall be considered to be employed at the
13 project; and -

14 (d) ~~(4)~~ Employees who work at a military installation in Nebraska
15 for a taxpayer on tasks interdependent with the work performed at the
16 project shall be considered to be employed at the project.

17 (2) For applications filed on or after January 1, 2018, number of
18 new employees means the number of equivalent employees that are employed
19 at all qualified locations in Nebraska or in the development region,
20 whichever is applicable, by the taxpayer during a year that are in excess
21 of the number of equivalent employees employed at all qualified locations
22 in Nebraska or in the development region during the base year, not to
23 exceed the number of equivalent employees employed at all locations in
24 Nebraska or in the development region during a year who are not base-year
25 employees and who are paid at a rate equal to or greater than the
26 required wages. Nebraska employees who are based at a qualified location
27 and operate motor vehicles carrying tangible personal property as a
28 common or contract carrier predominately carrying loads to or from a
29 qualified location or locations are counted in the number of new
30 employees for miles driven in Nebraska. Miles driven in Nebraska are
31 converted to hours worked at fifty-five miles per hour.

1 Sec. 9. Section 77-5715, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 77-5715 (1) For applications filed before January 1, 2018:

4 (a) ~~(1)~~ For a tier 2, tier 3, tier 4, or tier 5 project, qualified
5 business means any business engaged in:

6 (i) ~~(a)~~ The conducting of research, development, or testing for
7 scientific, agricultural, animal husbandry, food product, or industrial
8 purposes;

9 (ii) ~~(b)~~ The performance of data processing, telecommunication,
10 insurance, or financial services. For purposes of this subdivision,
11 financial services includes only financial services provided by any
12 financial institution subject to tax under Chapter 77, article 38, or any
13 person or entity licensed by the Department of Banking and Finance or the
14 federal Securities and Exchange Commission and telecommunication services
15 includes community antenna television service, Internet access, satellite
16 ground station, call center, or telemarketing;

17 (iii) ~~(c)~~ The assembly, fabrication, manufacture, or processing of
18 tangible personal property;

19 (iv) ~~(d)~~ The administrative management of the taxpayer's activities,
20 including headquarter facilities relating to such activities or the
21 administrative management of any of the activities of any business entity
22 or entities in which the taxpayer or a group of its shareholders holds
23 any direct or indirect ownership interest of at least ten percent,
24 including headquarter facilities relating to such activities;

25 (v) ~~(e)~~ The storage, warehousing, distribution, transportation, or
26 sale of tangible personal property;

27 (vi) ~~(f)~~ The sale of tangible personal property if the taxpayer
28 derives at least seventy-five percent or more of the sales or revenue
29 attributable to such activities relating to the project from sales to
30 consumers who are not related persons and are located outside the state;

31 (vii) ~~(g)~~ The sale of software development services, computer

1 systems design, product testing services, or guidance or surveillance
2 systems design services or the licensing of technology if the taxpayer
3 derives at least seventy-five percent of the sales or revenue
4 attributable to such activities relating to the project from sales or
5 licensing either to customers who are not related persons and located
6 outside the state or to the United States Government, including sales of
7 such services, systems, or products delivered by providing the customer
8 with software or access to software over the Internet or by other
9 electronic means, regardless of whether the software or data accessed by
10 customers is stored on a computer owned by the applicant, the customer,
11 or a third party and regardless of whether the computer storing the
12 software or data is located at the project;

13 (viii) ~~(h)~~ The research, development, and maintenance of an Internet
14 web portal. For purposes of this subdivision, Internet web portal means
15 an Internet site that allows users to access, search, and navigate the
16 Internet;

17 (ix) ~~(i)~~ The research, development, and maintenance of a data
18 center;

19 (x) ~~(j)~~ The production of electricity by using one or more sources
20 of renewable energy to produce electricity for sale. For purposes of this
21 subdivision, sources of renewable energy includes, but is not limited to,
22 wind, solar, geothermal, hydroelectric, biomass, and transmutation of
23 elements; or

24 (xi) ~~(k)~~ Any combination of the activities listed in subdivisions
25 (1)(a)(i) to (x) of this section; this subsection.

26 (b) ~~(2)~~ For a tier 1 project, qualified business means any business
27 engaged in:

28 (i) ~~(a)~~ The conducting of research, development, or testing for
29 scientific, agricultural, animal husbandry, food product, or industrial
30 purposes;

31 (ii) ~~(b)~~ The assembly, fabrication, manufacture, or processing of

1 tangible personal property;

2 (iii) ~~(e)~~ The sale of software development services, computer
3 systems design, product testing services, or guidance or surveillance
4 systems design services or the licensing of technology if the taxpayer
5 derives at least seventy-five percent of the sales or revenue
6 attributable to such activities relating to the project from sales or
7 licensing either to customers who are not related persons and are located
8 outside the state or to the United States Government, including sales of
9 such services, systems, or products delivered by providing the customer
10 with software or access to software over the Internet or by other
11 electronic means, regardless of whether the software or data accessed by
12 customers is stored on a computer owned by the applicant, the customer,
13 or a third party and regardless of whether the computer storing the
14 software or data is located at the project; or

15 (iv) ~~(d)~~ Any combination of activities listed in subdivisions (1)(b)
16 (i) to (iii) of this section; this subsection.

17 (c) ~~(3)~~ For a tier 6 project, qualified business means any business
18 except a business excluded by subdivision (1)(d) subsection (4) of this
19 section; and -

20 (d) ~~(4)~~ Except for business activity described in subdivision (1)(a)
21 (vi) ~~(1)(f)~~ of this section, qualified business does not include any
22 business activity in which eighty percent or more of the total sales are
23 sales to the ultimate consumer of (i) ~~(a)~~ food prepared for immediate
24 consumption or (ii) ~~(b)~~ tangible personal property which is not
25 assembled, fabricated, manufactured, or processed by the taxpayer or used
26 by the purchaser in any of the activities listed in subdivision (1)(a) or
27 (b) subsection (1) or (2) of this section.

28 (2) For applications filed on or after January 1, 2018:

29 (a) Qualified business means any business activity other than those
30 excluded by subdivision (2)(b) and (c) of this section. Business
31 activities shall be based on the first two to four numbers of the North

1 American Industry Classification System established by the United States
2 Department of Commerce and applied to classify the locations owned or
3 leased by the taxpayer;

4 (b) Qualified business does not include the following types of
5 business activities:

6 (i) Agriculture, forestry, fishing and hunting - 11;

7 (ii) Mining, quarrying, and oil and gas extraction - 21;

8 (iii) Utilities - 22, except for wind electric power generation -
9 22115;

10 (iv) Construction - 23;

11 (v) Air transportation - 481;

12 (vi) Transit and ground passenger transportation - 485;

13 (vii) Scenic and sightseeing transportation - 487;

14 (viii) Support activities for transportation - 488;

15 (ix) Motion picture and sound recording industries - 512;

16 (x) Broadcasting (except Internet) - 515;

17 (xi) Other information services - 519;

18 (xii) Real estate and rental and leasing - 53;

19 (xiii) Legal services - 5411;

20 (xiv) Accounting, tax preparation, bookkeeping, and payroll services
21 - 5412;

22 (xv) Architectural, engineering, and related services - 5413;

23 (xvi) Specialized design services - 5414;

24 (xvii) Management, scientific, and technical consulting services -
25 5416;

26 (xviii) Advertising, public relations, and related services - 5418;

27 (xix) Other professional, scientific, and technical services - 5419;

28 (xx) Management of companies and enterprises - 55;

29 (xxi) Administrative and support services - 561;

30 (xxii) Waste management and remediation services - 562;

31 (xxiii) Educational services - 61;

- 1 (xxiv) Health care and social assistance - 62;
- 2 (xxv) Arts, entertainment, and recreation - 71;
- 3 (xxvi) Accommodation and food services - 72;
- 4 (xxvii) Other services (except public administration) - 81; and
- 5 (xxviii) Public administration - 92; and

6 (c) Qualified business also excludes:

7 (i) Casinos; and

8 (ii) The retail selling of tangible personal property that is not
9 manufactured by the taxpayer unless at least seventy-five percent of the
10 revenue is from sales to customers who are not related persons which are
11 delivered to a location outside Nebraska.

12 Sec. 10. Qualified location means an entire place owned or leased
13 by the taxpayer which the Department of Revenue determines is not
14 predominantly conducting a business activity excluded from the definition
15 of qualified business under subdivision (2)(b) or (c) of section 77-5715.
16 For business activity described in subdivision (2)(c)(ii) of section
17 77-5715, the taxpayer, as part of its agreement, must agree to generate
18 at least seventy-five percent of its revenue from sales to customers who
19 are not related persons which are delivered to a location outside
20 Nebraska.

21 Sec. 11. Section 77-5717, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 77-5717 (1) Qualified property means any tangible property of a
24 type subject to depreciation, amortization, or other recovery under the
25 Internal Revenue Code of 1986, as amended, or the components of such
26 property, that will be located and used at the project or a qualified
27 location.

28 (2) Qualified property does not include (a) ~~(1)~~ aircraft, barges,
29 motor vehicles, railroad rolling stock, or watercraft or (b) ~~(2)~~ property
30 that is rented by the taxpayer qualifying under the Nebraska Advantage
31 Act to another person.

1 (3) For applications filed before January 1, 2018, qualified
2 property includes qualified ~~Qualified~~ property of the taxpayer located at
3 the residence of a teleworker working in Nebraska from his or her
4 residence on tasks interdependent with the work performed at the project
5 ~~shall be deemed located and used at the project.~~

6 Sec. 12. Required levels means the minimum increase in the number
7 of new employees and investment required to qualify for benefits under
8 the Nebraska Advantage Act.

9 Sec. 13. Required wages means the minimum average annual wage
10 required to qualify for benefits under the Nebraska Advantage Act for the
11 number of new employees.

12 Sec. 14. Section 77-5719.01, Reissue Revised Statutes of Nebraska,
13 is amended to read:

14 77-5719.01 Tier 6 weekly required compensation means two hundred
15 percent of the county average weekly wage for the county in which the
16 project or qualified location is located or one hundred fifty percent of
17 the state average weekly wage, whichever is higher. If the project is
18 located in more than one county or the qualified locations are in more
19 than one county, the higher county average weekly wage shall be used to
20 determine the tier 6 weekly required compensation.

21 Sec. 15. Section 77-5723, Revised Statutes Cumulative Supplement,
22 2016, is amended to read:

23 77-5723 For applications filed before January 1, 2018:

24 (1) In order to utilize the incentives set forth in the Nebraska
25 Advantage Act, the taxpayer shall file an application, on a form
26 developed by the Tax Commissioner, requesting an agreement with the Tax
27 Commissioner; -

28 (2) The application shall contain:

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

31 (b) Sufficient documents, plans, and specifications as required by

1 the Tax Commissioner to support the plan and to define a project;

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

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

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

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

23 (3) An application must be complete to establish the date of the
24 application. An application shall be considered complete once it contains
25 the items listed in subdivision ~~subsection~~ (2) of this section,
26 regardless of the Tax Commissioner's additional needs pertaining to
27 information or clarification in order to approve or not approve the
28 application; -

29 (4) Once satisfied that the plan in the application defines a
30 project consistent with the purposes stated in the Nebraska Advantage Act
31 in one or more qualified business activities within this state, that the

1 taxpayer and the plan will qualify for benefits under the act, and that
2 the required levels of employment and investment for the project will be
3 met prior to the end of the fourth year after the year in which the
4 application was submitted for a tier 1, tier 3, or tier 6 project or the
5 end of the sixth year after the year in which the application was
6 submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner
7 shall approve the application. For a tier 5 project that is sequential to
8 a tier 2 large data center project, the required level of investment
9 shall be met prior to the end of the fourth year after the expiration of
10 the tier 2 large data center project entitlement period relating to
11 direct sales tax refunds; -

12 (5) The Tax Commissioner shall make his or her determination to
13 approve or not approve an application within one hundred eighty days
14 after the date of the application. If the Tax Commissioner requests, by
15 mail or by electronic means, additional information or clarification from
16 the taxpayer in order to make his or her determination, such one-hundred-
17 eighty-day period shall be tolled from the time the Tax Commissioner
18 makes the request to the time he or she receives the requested
19 information or clarification from the taxpayer. The taxpayer and the Tax
20 Commissioner may also agree to extend the one-hundred-eighty-day period.
21 If the Tax Commissioner fails to make his or her determination within the
22 prescribed one-hundred-eighty-day period, the application shall be deemed
23 approved; -

24 (6) Within one hundred eighty days after approval of the
25 application, the Tax Commissioner shall prepare and mail a written
26 agreement to the taxpayer for the taxpayer's signature. The taxpayer and
27 the Tax Commissioner shall enter into a written agreement. The taxpayer
28 shall agree to complete the project, and the Tax Commissioner, on behalf
29 of the State of Nebraska, shall designate the approved plan of the
30 taxpayer as a project and, in consideration of the taxpayer's agreement,
31 agree to allow the taxpayer to use the incentives contained in the

1 Nebraska Advantage Act. The application, and all supporting
2 documentation, to the extent approved, shall be considered a part of the
3 agreement. The agreement shall state:

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

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

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

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

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

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

1 and Investment Growth Act shall not preclude investment not eligible for
2 the property tax exemption from being considered new investment under the
3 Nebraska Advantage Act; -

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

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

22 Sec. 16. For applications filed on or after January 1, 2018:

23 (1) In order to use the incentives allowed by the Nebraska Advantage
24 Act, the taxpayer must file an application on a form developed by the Tax
25 Commissioner;

26 (2) To be complete, the application must contain:

27 (a) A declaration of intent to meet or exceed the required levels
28 and the required wages;

29 (b) A declaration of whether the investment and new employment will
30 be determined on a statewide basis or by development region;

31 (c) The tier selected by the taxpayer;

1 (d) All locations operated by the taxpayer in Nebraska, their
2 corresponding classifications under the North American Industry
3 Classification System classifications, and their federal employment
4 identification numbers;

5 (e) If the taxpayer will be engaged in the business of selling
6 tangible personal property at any qualified location, a declaration that
7 at least seventy-five percent of the revenue will be from sales to
8 customers who are not related persons which are delivered to a location
9 outside Nebraska; and

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

15 (3) The application is confidential except for the name of the
16 taxpayer, the intended levels of employment and investment, and the
17 information required to be reported by sections 77-5731 and 77-5734;

18 (4) Once satisfied that the application is complete, that the
19 applicant is a taxpayer, and that the applicant has or will have one or
20 more qualified locations in the state or development region, the Tax
21 Commissioner shall approve the application and designate the qualified
22 locations where the new employment and investment must be made and the
23 required wages for new employees must be met;

24 (5) The Tax Commissioner shall not approve an application under the
25 Nebraska Advantage Act unless the taxpayer provides evidence satisfactory
26 to the Tax Commissioner that the taxpayer electronically verifies the
27 work eligibility status of all newly hired employees employed in
28 Nebraska;

29 (6) The Tax Commissioner shall make his or her determination to
30 approve or not approve an application within sixty days after the
31 application date. If the Tax Commissioner requests, by mail or by

1 electronic means, additional information or clarification from the
2 taxpayer in order to make his or her determination, such sixty-day period
3 shall be tolled from the time the Tax Commissioner makes the request to
4 the time he or she receives the requested information or clarification
5 from the taxpayer. The taxpayer and the Tax Commissioner may also agree
6 to extend the sixty-day period. If the Tax Commissioner fails to make his
7 or her determination within the prescribed sixty-day period, the
8 application shall be deemed approved;

9 (7) Within sixty days after approval of the application, the Tax
10 Commissioner shall prepare and mail a written agreement to the taxpayer
11 for the taxpayer's signature. The taxpayer and the Tax Commissioner shall
12 enter into a written agreement. The taxpayer shall agree to meet or
13 exceed the required levels and required wages and report wage and hour
14 information as required by the Department of Labor, and the Tax
15 Commissioner, on behalf of the State of Nebraska, shall approve the
16 application of the taxpayer and, in consideration of the taxpayer's
17 agreement, agree to allow the taxpayer to use the incentives contained in
18 the Nebraska Advantage Act. The application, and all supporting
19 documentation, to the extent approved, shall be considered a part of the
20 agreement. The agreement shall state:

21 (a) The required levels and the required wages that must be met;

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

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

26 (d) The date the application was complete; and

27 (e) A requirement that the taxpayer update the Department of Revenue
28 annually on any changes in plans or circumstances which affect the
29 timetable of sales tax refunds as set out in the application. If the
30 taxpayer fails to comply with this requirement, the Tax Commissioner may
31 defer any pending sales tax refunds until the taxpayer does comply;

1 (8) The incentives contained in the Nebraska Advantage Act shall be
2 in lieu of the tax credits allowed by the Nebraska Advantage Rural
3 Development Act for any project. In computing credits under the act, any
4 investment or employment that is eligible for benefits or used in
5 determining benefits under the Nebraska Advantage Act shall be subtracted
6 from the increases computed for determining the credits under section
7 77-27,188. New investment or employment at a project location that
8 results in the meeting or maintenance of the employment or investment
9 requirements, the creation of credits, or refunds of taxes under the
10 Employment and Investment Growth Act shall not be considered new
11 investment or employment for purposes of the Nebraska Advantage Act. The
12 use of carryover credits under the Employment and Investment Growth Act,
13 the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or
14 the Quality Jobs Act shall not preclude investment and employment from
15 being considered new investment or employment under the Nebraska
16 Advantage Act. The use of property tax exemptions at the project under
17 the Employment and Investment Growth Act not eligible for the property
18 tax exemption shall not preclude the investment from being considered new
19 investment under the Nebraska Advantage Act;

20 (9) A taxpayer and the Tax Commissioner may enter into agreements
21 for more than one development region. Agreements may involve the same
22 development region only if the second application is submitted after the
23 entitlement period for the first agreement has expired. When agreements
24 overlap as to time, the first agreement is considered to be abandoned and
25 is subject to recapture.

26 (10) The taxpayer may request that an agreement be modified if the
27 modification is consistent with the purposes of the act. An agreement may
28 not be modified to a tier that would grant a higher level of benefits to
29 the taxpayer or to a tier 1 agreement. Once the Tax Commissioner is
30 satisfied that the modification to the agreement is consistent with the
31 purposes stated in the act, the Tax Commissioner and taxpayer may amend

1 the agreement; and

2 (11) Notwithstanding any other requirements for confidentiality that
3 may apply, the Department of Labor and the Department of Revenue may
4 share the information necessary to establish the classifications under
5 the North American Industry Classification System for all locations of
6 taxpayers applying for or receiving benefits under the Nebraska Advantage
7 Act.

8 Sec. 17. Section 77-5724, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 77-5724 The following transactions or activities shall not create
11 any credits or allow any benefits under the Nebraska Advantage Act except
12 as specifically allowed by this section:

13 (1) The acquisition of a business after the date of application
14 which is continued by the taxpayer as a part of the agreement ~~project~~ and
15 which was operated in this state during the three hundred sixty-six days
16 prior to the date of acquisition. All employees of the entities added to
17 the taxpayer by the acquisition during the three hundred sixty-six days
18 prior to the date of acquisition shall be considered employees during the
19 base year. Any investment prior to the date of acquisition made by the
20 entities added to the taxpayer by the acquisition or any investment in
21 the acquisition of such business shall be considered as being made before
22 the date of application;

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

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

1 application;

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

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

12 (6) Any transaction entered into primarily for the purpose of
13 receiving benefits under the act which is without a business purpose and
14 does not result in increased economic activity in the state; and

15 (7) Any activity that results in benefits under the Ethanol
16 Development Act.

17 Sec. 18. Section 77-5725, Revised Statutes Cumulative Supplement,
18 2016, is amended to read:

19 77-5725 For applications filed before January 1, 2018:

20 (1) Applicants may qualify for benefits under the Nebraska Advantage
21 Act in one of six tiers:

22 (a) Tier 1, investment in qualified property of at least one million
23 dollars and the hiring of at least ten new employees. There shall be no
24 new project applications for benefits under this tier filed after
25 December 31, 2017 ~~2020~~. All complete project applications filed on or
26 before December 31, 2017 ~~2020~~, shall be considered by the Tax
27 Commissioner and approved if the project and taxpayer qualify for
28 benefits. Agreements may be executed with regard to completed project
29 applications filed on or before December 31, 2017 ~~2020~~. All project
30 agreements pending, approved, or entered into before such date shall
31 continue in full force and effect;

1 (b) Tier 2, (i) investment in qualified property of at least three
2 million dollars and the hiring of at least thirty new employees or (ii)
3 for a large data center project, investment in qualified property for the
4 data center of at least two hundred million dollars and the hiring for
5 the data center of at least thirty new employees. There shall be no new
6 project applications for benefits under this tier filed after December
7 31, 2017 ~~2020~~. All complete project applications filed on or before
8 December 31, 2017 ~~2020~~, shall be considered by the Tax Commissioner and
9 approved if the project and taxpayer qualify for benefits. Agreements may
10 be executed with regard to completed project applications filed on or
11 before December 31, 2017 ~~2020~~. All project agreements pending, approved,
12 or entered into before such date shall continue in full force and effect;

13 (c) Tier 3, the hiring of at least thirty new employees. There shall
14 be no new project applications for benefits under this tier filed after
15 December 31, 2017 ~~2020~~. All complete project applications filed on or
16 before December 31, 2017 ~~2020~~, shall be considered by the Tax
17 Commissioner and approved if the project and taxpayer qualify for
18 benefits. Agreements may be executed with regard to completed project
19 applications filed on or before December 31, 2017 ~~2020~~. All project
20 agreements pending, approved, or entered into before such date shall
21 continue in full force and effect;

22 (d) Tier 4, investment in qualified property of at least ten million
23 dollars and the hiring of at least one hundred new employees. There shall
24 be no new project applications for benefits under this tier filed after
25 December 31, 2017 ~~2020~~. All complete project applications filed on or
26 before December 31, 2017 ~~2020~~, shall be considered by the Tax
27 Commissioner and approved if the project and taxpayer qualify for
28 benefits. Agreements may be executed with regard to completed project
29 applications filed on or before December 31, 2017 ~~2020~~. All project
30 agreements pending, approved, or entered into before such date shall
31 continue in full force and effect;

1 (e) Tier 5, (i) investment in qualified property of at least thirty
2 million dollars or (ii) for the production of electricity by using one or
3 more sources of renewable energy to produce electricity for sale as
4 described in subdivision ~~(1)(a)(x)~~ ~~(1)(j)~~ of section 77-5715, investment
5 in qualified property of at least twenty million dollars. Failure to
6 maintain an average number of equivalent employees as defined in section
7 77-5727 greater than or equal to the number of equivalent employees in
8 the base year shall result in a partial recapture of benefits. There
9 shall be no new project applications for benefits under this tier filed
10 after December 31, 2017 ~~2020~~. All complete project applications filed on
11 or before December 31, 2017 ~~2020~~, shall be considered by the Tax
12 Commissioner and approved if the project and taxpayer qualify for
13 benefits. Agreements may be executed with regard to completed project
14 applications filed on or before December 31, 2017 ~~2020~~. All project
15 agreements pending, approved, or entered into before such date shall
16 continue in full force and effect; and

17 (f) Tier 6, investment in qualified property of at least ten million
18 dollars and the hiring of at least seventy-five new employees or the
19 investment in qualified property of at least one hundred million dollars
20 and the hiring of at least fifty new employees. There shall be no new
21 project applications for benefits under this tier filed after December
22 31, 2017 ~~2020~~. All complete project applications filed on or before
23 December 31, 2017 ~~2020~~, shall be considered by the Tax Commissioner and
24 approved if the project and taxpayer qualify for benefits. Agreements may
25 be executed with regard to completed project applications filed on or
26 before December 31, 2017 ~~2020~~. All project agreements pending, approved,
27 or entered into before such date shall continue in full force and
28 effect; -

29 (2) When the taxpayer has met the required levels of employment and
30 investment contained in the agreement for a tier 1, tier 2, tier 4, tier
31 5, or tier 6 project, the taxpayer shall be entitled to the following

1 incentives:

2 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
3 5, or tier 6 project or a refund of one-half of all sales and use taxes
4 for a tier 1 project paid under the Local Option Revenue Act, the
5 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813
6 from the date of the application through the meeting of the required
7 levels of employment and investment for all purchases, including rentals,
8 of:

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

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

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

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

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

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

9 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier
10 4 project shall be entitled to a credit equal to three percent times the
11 average wage of new employees times the number of new employees if the
12 average wage of the new employees equals at least sixty percent of the
13 Nebraska average annual wage for the year of application. The credit
14 shall equal four percent times the average wage of new employees times
15 the number of new employees if the average wage of the new employees
16 equals at least seventy-five percent of the Nebraska average annual wage
17 for the year of application. The credit shall equal five percent times
18 the average wage of new employees times the number of new employees if
19 the average wage of the new employees equals at least one hundred percent
20 of the Nebraska average annual wage for the year of application. The
21 credit shall equal six percent times the average wage of new employees
22 times the number of new employees if the average wage of the new
23 employees equals at least one hundred twenty-five percent of the Nebraska
24 average annual wage for the year of application. For computation of such
25 credit:

26 (a) Average annual wage means the total compensation paid to
27 employees during the year at the project who are not base-year employees
28 and who are paid wages equal to at least sixty percent of the Nebraska
29 average weekly wage for the year of application, excluding any
30 compensation in excess of one million dollars paid to any one employee
31 during the year, divided by the number of equivalent employees making up

1 such total compensation;

2 (b) Average wage of new employees means the average annual wage paid
3 to employees during the year at the project who are not base-year
4 employees and who are paid wages equal to at least sixty percent of the
5 Nebraska average weekly wage for the year of application, excluding any
6 compensation in excess of one million dollars paid to any one employee
7 during the year; and

8 (c) Nebraska average annual wage means the Nebraska average weekly
9 wage times fifty-two; -

10 (4) Any taxpayer who qualifies for a tier 6 project shall be
11 entitled to a credit equal to ten percent times the total compensation
12 paid to all employees, other than base-year employees, excluding any
13 compensation in excess of one million dollars paid to any one employee
14 during the year, employed at the project; -

15 (5) Any taxpayer who has met the required levels of employment and
16 investment for a tier 2 or tier 4 project shall receive a credit equal to
17 ten percent of the investment made in qualified property at the project.
18 Any taxpayer who has met the required levels of investment and employment
19 for a tier 1 project shall receive a credit equal to three percent of the
20 investment made in qualified property at the project. Any taxpayer who
21 has met the required levels of investment and employment for a tier 6
22 project shall receive a credit equal to fifteen percent of the investment
23 made in qualified property at the project; -

24 (6) The credits prescribed in subdivisions ~~subsections~~ (3), (4), and
25 (5) of this section shall be allowable for compensation paid and
26 investments made during each year of the entitlement period that the
27 taxpayer is at or above the required levels of employment and
28 investment; -

29 (7) The credit prescribed in subdivision ~~subsection~~ (5) of this
30 section shall also be allowable during the first year of the entitlement
31 period for investment in qualified property at the project after the date

1 of the application and before the required levels of employment and
2 investment were met; -

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

9 (b)(i) A taxpayer who has met the required levels of employment and
10 investment for a tier 4 project shall receive the exemption of property
11 in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer
12 who has met the required levels of employment and investment for a tier 6
13 project shall receive the exemption of property in subdivisions (8)(c)
14 (ii), (iii), (iv), and (v) of this section. Such property shall be
15 eligible for the exemption from the first January 1 following the end of
16 the year during which the required levels were exceeded through the ninth
17 December 31 after the first year property included in subdivisions (8)(c)
18 (ii), (iii), (iv), and (v) of this section qualifies for the exemption.

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

26 (iii) A taxpayer who has filed an application that describes a tier
27 2 large data center project or a tier 5 project that is sequential to a
28 tier 2 large data center project for which the entitlement period has
29 expired shall receive the exemption of all property in subdivision (8)(c)
30 of this section beginning any January 1 after the acquisition of the
31 property. Such property shall be eligible for exemption from the tax on

1 personal property from the January 1 preceding the first claim for
2 exemption approved under this subdivision through the ninth December 31
3 after the year the first claim for exemption is approved.

4 (iv) A taxpayer who has a project for an Internet web portal or a
5 data center and who has met the required levels of employment and
6 investment for a tier 2 project or the required level of investment for a
7 tier 5 project, taking into account only the employment and investment at
8 the web portal or data center project, shall receive the exemption of
9 property in subdivision (8)(c)(ii) of this section. Such property shall
10 be eligible for the exemption from the first January 1 following the end
11 of the year during which the required levels were exceeded through the
12 ninth December 31 after the first year any property included in
13 subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies
14 for the exemption.

15 (v) Such investment and hiring of new employees shall be considered
16 a required level of investment and employment for subdivision (8) of this
17 section ~~this subsection~~ and for the recapture of benefits under
18 subdivision (8) of this section ~~this subsection~~ only.

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

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

26 (ii) Computer systems, made up of equipment that is interconnected
27 in order to enable the acquisition, storage, manipulation, management,
28 movement, control, display, transmission, or reception of data involving
29 computer software and hardware, used for business information processing
30 which require environmental controls of temperature and power and which
31 are capable of simultaneously supporting more than one transaction and

1 more than one user. A computer system includes peripheral components
2 which require environmental controls of temperature and power connected
3 to such computer systems. Peripheral components shall be limited to
4 additional memory units, tape drives, disk drives, power supplies,
5 cooling units, data switches, and communication controllers;

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

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

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

14 (d) In order to receive the property tax exemptions allowed by
15 subdivision (8)(c) of this section, the taxpayer shall annually file a
16 claim for exemption with the Tax Commissioner on or before May 1. The
17 form and supporting schedules shall be prescribed by the Tax Commissioner
18 and shall list all property for which exemption is being sought under
19 this section. A separate claim for exemption must be filed for each
20 project and each county in which property is claimed to be exempt. A copy
21 of this form must also be filed with the county assessor in each county
22 in which the applicant is requesting exemption. The Tax Commissioner
23 shall determine whether a taxpayer is eligible to obtain exemption for
24 personal property based on the criteria for exemption and the eligibility
25 of each item listed for exemption and, on or before August 1, certify
26 such to the taxpayer and to the affected county assessor; and -

27 (9)(a) The investment thresholds in this section for a particular
28 year of application shall be adjusted by the method provided in this
29 subdivision (9) subsection, except that the investment threshold for a
30 tier 5 project described in subdivision (1)(e)(ii) of this section shall
31 not be adjusted.

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

10 (c) For tier 6, beginning October 1, 2008, and each October 1
11 thereafter, the average Producer Price Index for all commodities,
12 published by the United States Department of Labor, Bureau of Labor
13 Statistics, for the most recent twelve available periods shall be divided
14 by the Producer Price Index for the first quarter of 2008 and the result
15 multiplied by the applicable investment threshold. The investment
16 thresholds shall be adjusted for cumulative inflation since 2008.

17 (d) For a tier 2 large data center project, beginning October 1,
18 2012, and each October 1 thereafter, the average Producer Price Index for
19 all commodities, published by the United States Department of Labor,
20 Bureau of Labor Statistics, for the most recent twelve available periods
21 shall be divided by the Producer Price Index for the first quarter of
22 2012 and the result multiplied by the applicable investment threshold.
23 The investment thresholds shall be adjusted for cumulative inflation
24 since 2012.

25 (e) If the resulting amount is not a multiple of one million
26 dollars, the amount shall be rounded to the next lowest one million
27 dollars.

28 (f) The investment thresholds established by this subdivision (9)
29 ~~subsection~~ apply for purposes of project qualifications for all
30 applications filed on or after January 1 of the following year for all
31 years of the project. Adjustments do not apply to projects after the year

1 of application.

2 Sec. 19. For applications filed on or after January 1, 2018:

3 (1) To qualify for benefits under the Nebraska Advantage Act, the
4 taxpayer must attain the required levels and required wages at qualified
5 locations in Nebraska or in the development region as necessary to
6 satisfy one of the following six tiers:

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

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

31 (c) Tier 3, the hiring of at least thirty new employees who are paid

1 at least sixty percent of the Nebraska average weekly wage. There shall
2 be no new applications for benefits under this tier filed after December
3 31, 2020. All complete applications filed on or before December 31, 2020,
4 shall be considered by the Tax Commissioner and approved if the locations
5 and taxpayer qualify for benefits. Agreements may be executed with regard
6 to completed applications filed on or before December 31, 2020. All
7 agreements pending, approved, or entered into before such date shall
8 continue in full force and effect;

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

19 (e) Tier 5, investment in qualified property of at least thirty-four
20 million dollars. Failure to maintain an average number of equivalent
21 employees as defined in section 23 of this act greater than or equal to
22 the number of equivalent employees in the base year shall result in a
23 partial recapture of benefits. There shall be no new applications for
24 benefits under this tier filed after December 31, 2020. All complete
25 applications filed on or before December 31, 2020, shall be considered by
26 the Tax Commissioner and approved if the locations and taxpayer qualify
27 for benefits. Agreements may be executed with regard to completed
28 applications filed on or before December 31, 2020. All agreements
29 pending, approved, or entered into before such date shall continue in
30 full force and effect; and

31 (f) Tier 6, (i) investment in qualified property of at least ten

1 million dollars and the hiring of at least seventy-five new employees who
2 are paid at least the greater of one-hundred fifty percent of the
3 Nebraska average weekly wage or two hundred percent of the county average
4 weekly wage or (ii) investment in qualified property of at least one
5 hundred million dollars and the hiring of at least fifty new employees
6 who are paid at least the greater of one-hundred fifty percent of the
7 Nebraska average weekly wage or two hundred percent of the county average
8 weekly wage. There shall be no new applications for benefits under this
9 tier filed after December 31, 2020. All complete applications filed on or
10 before December 31, 2020, shall be considered by the Tax Commissioner and
11 approved if the locations and taxpayer qualify for benefits. Agreements
12 may be executed with regard to completed applications filed on or before
13 December 31, 2020. All agreements pending, approved, or entered into
14 before such date shall continue in full force and effect;

15 (2) When the taxpayer has met the required levels and required wages
16 for a tier 1, tier 2, tier 4, tier 5, or tier 6 agreement, the taxpayer
17 shall be entitled to the following incentives:

18 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
19 5, or tier 6 agreement or a refund of one-half of all sales and use taxes
20 for a tier 1 agreement paid under the Local Option Revenue Act, the
21 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813
22 from the date of the application through the meeting of the required
23 levels of employment and investment for all purchases, including rentals,
24 of:

25 (i) Qualified property used at qualified locations;

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

30 (iii) Tangible personal property by a contractor or repairperson
31 after appointment as a purchasing agent of the owner of the improvement

1 to real estate when such property is incorporated into real estate or
2 annexed but not incorporated into real estate at a qualified location.
3 The refund shall be based on fifty percent of the contract price,
4 excluding any land, which is considered to be the cost of materials
5 subject to the sales and use tax; and

6 (b) A refund of all sales and use taxes for a tier 2, tier 4, tier
7 5, or tier 6 agreement or a refund of one-half of all sales and use taxes
8 for a tier 1 agreement paid under the Local Option Revenue Act, the
9 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on
10 the types of purchases, including rentals, listed in subdivision (2)(a)
11 of this section for such taxes paid during each year of the entitlement
12 period in which the taxpayer is at or above the required levels and
13 required wages;

14 (3) Any taxpayer who qualifies with a tier 1, tier 2, tier 3, or
15 tier 4 agreement shall be entitled to a credit equal to three percent
16 times the average wage of new employees times the number of new employees
17 if the average wage of the new employees equals at least sixty percent of
18 the Nebraska average annual wage for the year of application. The credit
19 shall equal four percent times the average wage of new employees times
20 the number of new employees if the average wage of the new employees
21 equals at least seventy-five percent of the Nebraska average annual wage
22 for the year of application. The credit shall equal five percent times
23 the average wage of new employees times the number of new employees if
24 the average wage of the new employees equals at least one hundred percent
25 of the Nebraska average annual wage for the year of application. The
26 credit shall equal six percent times the average wage of new employees
27 times the number of new employees if the average wage of the new
28 employees equals at least one hundred twenty-five percent of the Nebraska
29 average annual wage for the year of application. For computation of such
30 credit:

31 (a) Average annual wage means the total compensation paid to

1 employees during the year at qualified locations who are not base-year
2 employees and who are paid wages equal to at least sixty percent of the
3 Nebraska average weekly wage for the year of application, excluding any
4 compensation in excess of one million dollars paid to any one employee
5 during the year, divided by the number of equivalent employees making up
6 such total compensation;

7 (b) Average wage of new employees means the average annual wage paid
8 to employees during the year at qualified locations who are not base-year
9 employees and who are paid wages equal to at least sixty percent of the
10 Nebraska average weekly wage for the year of application, excluding any
11 compensation in excess of one million dollars paid to any one employee
12 during the year; and

13 (c) Nebraska average annual wage means the Nebraska average weekly
14 wage times fifty-two;

15 (4) Any taxpayer who qualifies for a tier 6 agreement shall be
16 entitled to a credit equal to ten percent times the total compensation
17 paid to all employees, other than base-year employees, excluding any
18 compensation in excess of one million dollars paid to any one employee
19 during the year, employed at qualified locations;

20 (5) Any taxpayer who has met the required levels and required wages
21 for a tier 2 or tier 4 agreement shall receive a credit equal to ten
22 percent of the investment made in qualified property at a qualified
23 location. Any taxpayer who has met the required levels and required wages
24 for a tier 1 agreement shall receive a credit equal to three percent of
25 the investment made in qualified property at a qualified location. Any
26 taxpayer who has met the required levels and required wages for a tier 6
27 agreement shall receive a credit equal to fifteen percent of the
28 investment made in qualified property at a qualified location;

29 (6) The credits prescribed in subdivisions (3), (4), and (5) of this
30 section shall be allowable for compensation paid and investments made
31 during each year of the entitlement period that the taxpayer is at or

1 above the required levels and required wages;

2 (7) The credit prescribed in subdivision (5) of this section shall
3 also be allowable during the first year of the entitlement period for
4 investment in qualified property at a qualified location after the date
5 of the application and before the required levels and required wages were
6 met;

7 (8)(a) Property described in subdivisions (8)(c)(i) through (v) of
8 this section and acquired by the taxpayer, whether by lease or purchase,
9 after the date the application was filed, shall constitute separate
10 classes of property and are eligible for exemption under the conditions
11 and for the time periods provided in subdivision (8)(b) of this section.

12 (b)(i) A taxpayer who has met the required levels and required wages
13 for a tier 4 agreement shall receive the exemption of property in
14 subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer who
15 has met the required levels and required wages for a tier 6 agreement
16 shall receive the exemption of property in subdivisions (8)(c)(ii),
17 (iii), (iv), and (v) of this section. Such property shall be eligible for
18 the exemption from the first January 1 following the end of the year
19 during which the required levels and required wages were exceeded through
20 the ninth December 31 after the first year property included in
21 subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies
22 for the exemption.

23 (ii) A taxpayer who has filed an application that describes a tier 2
24 large data center or a tier 4 or tier 6 agreement shall receive the
25 exemption of property in subdivision (8)(c)(i) of this section beginning
26 with the first January 1 following the acquisition of the property. The
27 exemption shall continue through the end of the period property included
28 in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section
29 qualifies for the exemption.

30 (iii) A taxpayer who has filed an application that describes a tier
31 2 large data center or a tier 5 agreement that is sequential to a tier 2

1 large data center for which the entitlement period has expired shall
2 receive the exemption of all property in subdivision (8)(c) of this
3 section beginning any January 1 after the acquisition of the property.
4 Such property shall be eligible for exemption from the tax on personal
5 property from the January 1 preceding the first claim for exemption
6 approved under this subdivision through the ninth December 31 after the
7 year the first claim for exemption is approved.

8 (iv) A taxpayer who has an agreement describing an Internet web
9 portal or a data center and who has met the required levels and required
10 wages for a tier 2 agreement or the required levels and required wages
11 for a tier 5 agreement, taking into account only the employment and
12 investment at the web portal or data center, shall receive the exemption
13 of property in subdivision (8)(c)(ii) of this section. Such property
14 shall be eligible for the exemption from the first January 1 following
15 the end of the year during which the required levels were exceeded
16 through the ninth December 31 after the first year any property included
17 in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section
18 qualifies for the exemption.

19 (v) Such investment and hiring of new employees shall be considered
20 required levels of investment and employment for this subdivision (8) of
21 this section and for the recapture of benefits under subdivision (8) of
22 this section only.

23 (c) The following property acquired by the taxpayer, whether by
24 lease or purchase, after the date the application was complete shall
25 constitute separate classes of personal property:

26 (i) Turbine-powered aircraft used in connection with an agreement,
27 including turboprop, turbojet, and turbofan aircraft, except when any
28 such aircraft is used for fundraising for or for the transportation of an
29 elected official;

30 (ii) Computer systems at a qualified location, made up of equipment
31 that is interconnected in order to enable the acquisition, storage,

1 manipulation, management, movement, control, display, transmission, or
2 reception of data involving computer software and hardware, used for
3 business information processing which require environmental controls of
4 temperature and power and which are capable of simultaneously supporting
5 more than one transaction and more than one user. A computer system
6 includes peripheral components which require environmental controls of
7 temperature and power connected to such computer systems. Peripheral
8 components shall be limited to additional memory units, tape drives, disk
9 drives, power supplies, cooling units, data switches, and communication
10 controllers;

11 (iii) Depreciable personal property used for a distribution facility
12 in a qualified location, including, but not limited to, storage racks,
13 conveyor mechanisms, forklifts, and other property used to store or move
14 products;

15 (iv) Personal property that is business equipment located at a
16 qualified location if the business equipment is involved directly in the
17 manufacture or processing of agricultural products; and

18 (v) For a tier 2 large data center agreement or tier 6 agreement,
19 any other personal property located at qualified locations.

20 (d) In order to receive the property tax exemptions allowed by
21 subdivision (8)(c) of this section, the taxpayer shall annually file a
22 claim for exemption with the Tax Commissioner on or before May 1. The
23 form and supporting schedules shall be prescribed by the Tax Commissioner
24 and shall list all property for which exemption is being sought under
25 this section. A separate claim for exemption must be filed for each
26 agreement and each county in which property is claimed to be exempt. A
27 copy of this form must also be filed with the county assessor in each
28 county in which the applicant is requesting exemption. The Tax
29 Commissioner shall determine whether a taxpayer is eligible to obtain
30 exemption for personal property based on the criteria for exemption and
31 the eligibility of each item listed for exemption and, on or before

1 August 1, certify such to the taxpayer and to the affected county
2 assessor; and

3 (9)(a) The investment thresholds in this section for a particular
4 year of application shall be adjusted by the method provided in this
5 subdivision (9).

6 (b) For tier 1, tier 2, tier 4, tier 5, and tier 6 agreements,
7 beginning October 1, 2018, and each October 1 thereafter, the average
8 Producer Price Index for all commodities, published by the United States
9 Department of Labor, Bureau of Labor Statistics, for the most recent
10 twelve available periods shall be divided by the Producer Price Index for
11 the first quarter of 2018 and the result multiplied by the applicable
12 investment threshold. The investment thresholds shall be adjusted for
13 cumulative inflation since 2018.

14 (c) If the resulting amount is not a multiple of one million
15 dollars, the amount shall be rounded to the next lowest one million
16 dollars.

17 (d) The investment thresholds established by this subdivision (9)
18 apply to all applications filed on or after January 1 of the following
19 year for all years of the agreement. Adjustments do not apply to
20 agreements after the year of application.

21 Sec. 20. Section 77-5726, Revised Statutes Cumulative Supplement,
22 2016, is amended to read:

23 77-5726 For applications filed before January 1, 2018:

24 (1)(a) The credits prescribed in section 77-5725 for a year shall be
25 established by filing the forms required by the Tax Commissioner with the
26 income tax return for the taxable year which includes the end of the year
27 the credits were earned. The credits may be used and shall be applied in
28 the order in which they were first allowed. The credits may be used after
29 any other nonrefundable credits to reduce the taxpayer's income tax
30 liability imposed by sections 77-2714 to 77-27,135. Credits may be used
31 beginning with the taxable year which includes December 31 of the year

1 the required minimum levels were reached. The last year for which credits
2 may be used is the taxable year which includes December 31 of the last
3 year of the carryover period. Any decision on how part of the credit is
4 applied shall not limit how the remaining credit could be applied under
5 this section.

6 (b) The taxpayer may use the credit provided in subdivision
7 ~~subsection~~ (3) of section 77-5725 to reduce the taxpayer's income tax
8 withholding employer or payor tax liability under section 77-2756 or
9 77-2757 to the extent such liability is attributable to the number of new
10 employees at the project, excluding any compensation in excess of one
11 million dollars paid to any one employee during the year. The taxpayer
12 may use the credit provided in subdivision ~~subsection~~ (4) of section
13 77-5725 to reduce the taxpayer's income tax withholding employer or payor
14 tax liability under section 77-2756 or 77-2757 to the extent such
15 liability is attributable to all employees employed at the project, other
16 than base-year employees and excluding any compensation in excess of one
17 million dollars paid to any one employee during the year. To the extent
18 of the credit used, such withholding shall not constitute public funds or
19 state tax revenue and shall not constitute a trust fund or be owned by
20 the state. The use by the taxpayer of the credit shall not change the
21 amount that otherwise would be reported by the taxpayer to the employee
22 under section 77-2754 as income tax withheld and shall not reduce the
23 amount that otherwise would be allowed by the state as a refundable
24 credit on an employee's income tax return as income tax withheld under
25 section 77-2755.

26 For a tier 1, tier 2, tier 3, or tier 4 project, the amount of
27 credits used against income tax withholding shall not exceed the
28 withholding attributable to new employees employed at the project,
29 excluding any compensation in excess of one million dollars paid to any
30 one employee during the year.

31 For a tier 6 project, the amount of credits used against income tax

1 withholding shall not exceed the withholding attributable to all
2 employees employed at the project, other than base-year employees and
3 excluding any compensation in excess of one million dollars paid to any
4 one employee during the year.

5 If the amount of credit used by the taxpayer against income tax
6 withholding exceeds this amount, the excess withholding shall be returned
7 to the Department of Revenue in the manner provided in section 77-2756,
8 such excess amount returned shall be considered unused, and the amount of
9 unused credits may be used as otherwise permitted in this section or
10 shall carry over to the extent authorized in subdivision (1)(e) of this
11 section.

12 (c) Credits may be used to obtain a refund of sales and use taxes
13 under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and
14 sections 13-319, 13-324, and 13-2813 which are not otherwise refundable
15 that are paid on purchases, including rentals, for use at the project for
16 a tier 1, tier 2, tier 3, or tier 4 project or for use within this state
17 for a tier 2 large data center project or a tier 6 project.

18 (d) The credits earned for a tier 6 project may be used to obtain a
19 payment from the state equal to the real property taxes due after the
20 year the required levels of employment and investment were met and before
21 the end of the carryover period, for real property that is included in
22 such project and acquired by the taxpayer, whether by lease or purchase,
23 after the date the application was filed. Once the required levels of
24 employment and investment for a tier 2 large data center project have
25 been met, the credits earned for a tier 2 large data center project may
26 be used to obtain a payment from the state equal to the real property
27 taxes due after the year of application and before the end of the
28 carryover period, for real property that is included in such project and
29 acquired by the taxpayer, whether by lease or purchase, after the date
30 the application was filed. The payment from the state shall be made only
31 after payment of the real property taxes have been made to the county as

1 required by law. Payments shall not be allowed for any taxes paid on real
2 property for which the taxes are divided under section 18-2147 or 58-507.

3 (e) Credits may be carried over until fully utilized, except that
4 such credits may not be carried over more than nine years after the year
5 of application for a tier 1 or tier 3 project, fourteen years after the
6 year of application for a tier 2 or tier 4 project, or more than one year
7 past the end of the entitlement period for a tier 6 project; -

8 (2)(a) No refund claims shall be filed until after the required
9 levels of employment and investment have been met.

10 (b) Refund claims shall be filed no more than once each quarter for
11 refunds under the Nebraska Advantage Act, except that any claim for a
12 refund in excess of twenty-five thousand dollars may be filed at any
13 time.

14 (c) Refund claims for materials purchased by a purchasing agent
15 shall include:

16 (i) A copy of the purchasing agent appointment;

17 (ii) The contract price; and

18 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of
19 section 77-5725, a certification by the contractor or repairperson of the
20 percentage of the materials incorporated into or annexed to the project
21 on which sales and use taxes were paid to Nebraska after appointment as
22 purchasing agent; or

23 (B) For refunds under subdivision (2)(a)(iv) of section 77-5725, a
24 certification by the contractor or repairperson of the percentage of the
25 contract price that represents the cost of materials annexed to the
26 project and the percentage of the materials annexed to the project on
27 which sales and use taxes were paid to Nebraska after appointment as
28 purchasing agent.

29 (d) All refund claims shall be filed, processed, and allowed as any
30 other claim under section 77-2708, except that the amounts allowed to be
31 refunded under the Nebraska Advantage Act shall be deemed to be

1 overpayments and shall be refunded notwithstanding any limitation in
2 subdivision (2)(a) of section 77-2708. The refund may be allowed if the
3 claim is filed within three years from the end of the year the required
4 levels of employment and investment are met or within the period set
5 forth in section 77-2708.

6 (e) If a claim for a refund of sales and use taxes under the Local
7 Option Revenue Act or sections 13-319, 13-324, and 13-2813 of more than
8 twenty-five thousand dollars is filed by June 15 of a given year, the
9 refund shall be made on or after November 15 of the same year. If such a
10 claim is filed on or after June 16 of a given year, the refund shall not
11 be made until on or after November 15 of the following year. The Tax
12 Commissioner shall notify the affected city, village, county, or
13 municipal county of the amount of refund claims of sales and use taxes
14 under the Local Option Revenue Act or sections 13-319, 13-324, and
15 13-2813 that are in excess of twenty-five thousand dollars on or before
16 July 1 of the year before the claims will be paid under this section.

17 (f) Interest shall not be allowed on any taxes refunded under the
18 Nebraska Advantage Act; -

19 (3) The appointment of purchasing agents shall be recognized for the
20 purpose of changing the status of a contractor or repairperson as the
21 ultimate consumer of tangible personal property purchased after the date
22 of the appointment which is physically incorporated into or annexed to
23 the project and becomes the property of the owner of the improvement to
24 real estate or the taxpayer. The purchasing agent shall be jointly liable
25 for the payment of the sales and use tax on the purchases with the owner
26 of the property; and -

27 (4) A determination that a taxpayer is not engaged in a qualified
28 business or has failed to meet or maintain the required levels of
29 employment or investment for incentives, exemptions, or recapture may be
30 protested within sixty days after the mailing of the written notice of
31 the proposed determination. If the notice of proposed determination is

1 not protested within the sixty-day period, the proposed determination is
2 a final determination. If the notice is protested, the Tax Commissioner
3 shall issue a written order resolving such protests. The written order of
4 the Tax Commissioner resolving a protest may be appealed to the district
5 court of Lancaster County within thirty days after the issuance of the
6 order.

7 Sec. 21. For applications filed on or after January 1, 2018:

8 (1)(a) The credits prescribed in section 19 of this act shall be
9 established by filing the forms required by the Tax Commissioner with the
10 income tax return for the taxable year which includes the December 31 of
11 the year the credits were earned. Credits may be used beginning with the
12 taxable year that includes December 31 of the year the required levels
13 and required wages were reached. The credits may be used and shall be
14 applied in the order in which they were first allowed. The credits may be
15 used after any other nonrefundable credits to reduce the taxpayer's
16 income tax liability imposed by sections 77-2714 to 77-27,135. The
17 required forms shall contain a certification issued by the Department of
18 Revenue or a certified public accountant approved by the Tax Commissioner
19 that the taxpayer has attained the required levels and required wages and
20 met all other requirements of the Nebraska Advantage Act necessary to
21 qualify for benefits. The last year for which credits may be used is the
22 taxable year which includes December 31 of the last year of the carryover
23 period. Any decision on how part of the credit is applied shall not limit
24 how the remaining credit could be applied under this section. The
25 Department of Revenue may audit taxpayers for compliance with the
26 requirements of the act and may issue a notice of deficiency
27 determination with regard to compliance with the act at any time until
28 three years after the last year of the entitlement period.

29 (b) The taxpayer may use the credits provided in subdivisions (3) or
30 (4) of section 19 of this act to reduce the taxpayer's income tax
31 withholding employer or payor tax liability under section 77-2756 or

1 77-2757 to the extent such liability is attributable to the new employees
2 of the taxpayer, excluding any compensation in excess of one million
3 dollars paid to any one employee during the year. To the extent of the
4 credit used, such withholding does not constitute public funds or state
5 tax revenue and does not constitute a trust fund owned by the state. The
6 use by the taxpayer of the credit does not change the amount that
7 otherwise would be reported by the taxpayer to the employee under section
8 77-2754 as income tax withheld and does not reduce the amount that
9 otherwise would be allowed by the state as a refundable credit on an
10 employee's income tax return as income tax withheld under section
11 77-2755.

12 For a tier 1, tier 2, tier 3, or tier 4 agreement, the amount of
13 credits used against income tax withholding cannot exceed the withholding
14 attributable to new employees employed by the taxpayer, excluding any
15 compensation in excess of one million dollars paid to any one employee
16 during the year. For a tier 6 agreement, the amount of credits used
17 against income tax withholding shall not exceed the withholding
18 attributable to all employees employed at the qualified locations, other
19 than base-year employees and excluding any compensation in excess of one
20 million dollars paid to any one employee during the year.

21 If the amount of credit used by the taxpayer against income tax
22 withholding exceeds this amount, the excess withholding must be returned
23 to the Department of Revenue in the manner provided in section 77-2756.
24 The excess amount returned is considered unused credits, and the amount
25 of unused credits may be used as otherwise permitted in this section or
26 may carry over to the extent authorized in this section.

27 (c) Credits may be used to obtain a refund of sales and use taxes
28 under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and
29 sections 13-319, 13-324, and 13-2813 that are paid on purchases,
30 including rentals, at qualified locations for a tier 1, tier 2, tier 3,
31 or tier 4 agreement or for use within this state for a tier 2 large data

1 center agreement or a tier 6 agreement. If credits are used to refund
2 sales and use taxes that could have been refunded for another reason, the
3 credits cannot be subsequently reinstated.

4 (d) Any credit allowable to a partnership, a limited liability
5 company, a subchapter S corporation, a cooperative, including a
6 cooperative exempt under section 521 of the Internal Revenue Code of
7 1986, as amended, a limited cooperative association, or an estate or
8 trust may be distributed to the partners, members, shareholders, patrons,
9 or beneficiaries in the same manner as income is distributed for use
10 against their income tax liabilities, and such partners, members,
11 shareholders, or beneficiaries shall be deemed to have made an
12 underpayment of their income taxes for any recapture required by the
13 Nebraska Advantage Act. A credit distributed is considered a credit used
14 and the partnership, limited liability company, subchapter S corporation,
15 cooperative, including a cooperative exempt under section 521 of the
16 Internal Revenue Code of 1986, as amended, limited cooperative
17 association, estate, or trust shall be liable for any repayment required
18 by section 23 of this act.

19 (e) The credits earned for a tier 6 agreement may be used to obtain
20 a payment from the state equal to the real property taxes due after the
21 year the required levels and required wages were met and before the end
22 of the carryover period, for real property that is included in the
23 qualified location and acquired by the taxpayer, whether by lease or
24 purchase, after the date the application was filed. Once the required
25 levels and required wages for a tier 2 large data center agreement have
26 been met, the credits earned for a tier 2 large data center agreement may
27 be used to obtain a payment from the state equal to the real property
28 taxes due after the year of application and before the end of the
29 carryover period, for real property that is in a qualified location and
30 acquired by the taxpayer, whether by lease or purchase, after the date
31 the application was completed. The payment from the state shall be made

1 only after payment of the real property taxes have been made to the
2 county as required by law. Payments shall not be allowed for any taxes
3 paid on real property for which the taxes are divided under section
4 18-2147 or 58-507.

5 (f) Credits may be carried over until fully utilized, except that
6 such credits may not be carried over more than nine years after the year
7 of application for a tier 1 or tier 3 agreement, fourteen years after the
8 year of application for a tier 2 or tier 4 agreement, or more than one
9 year past the end of the entitlement period for a tier 6 agreement;

10 (2)(a) No refund claims shall be filed until after the required
11 levels and required wages have been met.

12 (b) Refund claims shall be filed no more than once each quarter for
13 refunds under the Nebraska Advantage Act, except that any claim for a
14 refund in excess of twenty-five thousand dollars may be filed at any
15 time.

16 (c) Refund claims for materials purchased by a purchasing agent
17 shall include:

18 (i) A copy of the purchasing agent appointment;

19 (ii) The contract price; and

20 (iii) A certification by the contractor or repairperson of the
21 percentage of the materials incorporated into or annexed at a qualified
22 location on which sales and use taxes were paid to Nebraska after
23 appointment as purchasing agent.

24 (d) All refund claims shall be filed, processed, and allowed as any
25 other claim under section 77-2708, except that the amounts allowed to be
26 refunded under the Nebraska Advantage Act shall be deemed to be
27 overpayments and shall be refunded notwithstanding any limitation in
28 subdivision (2)(a) of section 77-2708. The refund may be allowed if the
29 claim is filed within three years from the end of the year the required
30 levels and required wages are met or within the period set forth in
31 section 77-2708.

1 (e) If a claim for a refund of sales and use taxes under the Local
2 Option Revenue Act or sections 13-319, 13-324, and 13-2813 of more than
3 twenty-five thousand dollars is filed by June 15 of a given year, the
4 refund shall be made on or after November 15 of the same year. If such a
5 claim is filed on or after June 16 of a given year, the refund shall not
6 be made until on or after November 15 of the following year. The Tax
7 Commissioner shall notify the affected city, village, county, or
8 municipal county of the amount of refund claims of sales and use taxes
9 under the Local Option Revenue Act or sections 13-319, 13-324, and
10 13-2813 that are in excess of twenty-five thousand dollars on or before
11 July 1 of the year before the claims will be paid under this section.

12 (f) Interest shall not be allowed on any taxes refunded under the
13 Nebraska Advantage Act;

14 (3) The appointment of purchasing agents shall be recognized for the
15 purpose of changing the status of a contractor or repairperson as the
16 ultimate consumer of tangible personal property purchased after the date
17 of the appointment which is physically incorporated into or annexed to
18 the project and becomes the property of the owner of the improvement to
19 real estate or the taxpayer. The purchasing agent shall be jointly liable
20 for the payment of the sales and use tax on the purchases with the owner
21 of the property; and

22 (4) A determination that a taxpayer is not engaged in a qualified
23 business or has failed to meet or maintain the required levels or
24 required wages for incentives, exemptions, or recapture may be protested
25 within sixty days after the mailing of the written notice of the proposed
26 determination. If the notice of proposed determination is not protested
27 within the sixty-day period, the proposed determination is a final
28 determination. If the notice is protested, the Tax Commissioner shall
29 issue a written order resolving such protests. The written order of the
30 Tax Commissioner resolving a protest may be appealed to the district
31 court of Lancaster County within thirty days after the issuance of the

1 order.

2 Sec. 22. Section 77-5727, Revised Statutes Cumulative Supplement,
3 2016, is amended to read:

4 77-5727 For applications filed before January 1, 2018:

5 (1)(a) If the taxpayer fails either to meet the required levels of
6 employment or investment for the applicable project by the end of the
7 fourth year after the end of the year the application was submitted for a
8 tier 1, tier 3, or tier 6 project or by the end of the sixth year after
9 the end of the year the application was submitted for a tier 2, tier 4,
10 or tier 5 project or to utilize such project in a qualified business at
11 employment and investment levels at or above those required in the
12 agreement for the entire entitlement period, all or a portion of the
13 incentives set forth in the Nebraska Advantage Act shall be recaptured or
14 disallowed.

15 (b) In the case of a taxpayer who has failed to meet the required
16 levels of investment or employment within the required time period, all
17 reduction in the personal property tax because of the act shall be
18 recaptured; -

19 (2) In the case of a taxpayer who has failed to maintain the project
20 at the required levels of employment or investment for the entire
21 entitlement period, any reduction in the personal property tax, any
22 refunds in tax allowed under subdivision ~~subsection~~ (2) of section
23 77-5725, and any refunds or reduction in tax allowed because of the use
24 of a credit allowed under section 77-5725 shall be partially recaptured
25 from either the taxpayer or the owner of the improvement to real estate
26 and any carryovers of credits shall be partially disallowed. The amount
27 of the recapture shall be a percentage equal to the number of years the
28 taxpayer did not maintain the project at or above the required levels of
29 investment and employment divided by the number of years of the project's
30 entitlement period multiplied by the refunds allowed, reduction in
31 personal property tax, the credits used, and the remaining carryovers. In

1 addition, the last remaining year of personal property tax exemption
2 shall be disallowed for each year the taxpayer did not maintain such
3 project at or above the required levels of employment or investment; -

4 (3) In the case of a taxpayer qualified under tier 5 who has failed
5 to maintain the average number of equivalent employees at the project at
6 the end of the six years following the year the taxpayer attained the
7 required amount of investment, any refunds in tax allowed under
8 subdivision ~~subsection~~ (2) of section 77-5725 or any reduction in the
9 personal property tax under section 77-5725 shall be partially recaptured
10 from the taxpayer. The amount of recapture shall be the total amount of
11 refunds and reductions in tax allowed for all years times the reduction
12 in the average number of equivalent employees employed at the end of the
13 entitlement period from the number of equivalent employees employed in
14 the base year divided by the number of equivalent employees employed in
15 the base year. For purposes of this subdivision ~~subsection~~, the average
16 number of equivalent employees shall be calculated at the end of the
17 entitlement period by adding the number of equivalent employees in the
18 year the taxpayer attains the required level of investment and each of
19 the next following six years and dividing the result by seven; -

20 (4) If the taxpayer receives any refunds or reduction in tax to
21 which the taxpayer was not entitled or which were in excess of the amount
22 to which the taxpayer was entitled, the refund or reduction in tax shall
23 be recaptured separate from any other recapture otherwise required by
24 this section. Any amount recaptured under this subdivision ~~subsection~~
25 shall be excluded from the amounts subject to recapture under other
26 subdivisions ~~subsections~~ of this section; -

27 (5) Any refunds or reduction in tax due, to the extent required to
28 be recaptured, shall be deemed to be an underpayment of the tax and shall
29 be immediately due and payable. When tax benefits were received in more
30 than one year, the tax benefits received in the most recent year shall be
31 recovered first and then the benefits received in earlier years up to the

1 extent of the required recapture; ~~-~~

2 (6)(a) Except as provided in subdivision (6)(b) of this section, any
3 personal property tax that would have been due except for the exemption
4 allowed under the Nebraska Advantage Act, to the extent it becomes due
5 under this section, shall be considered delinquent and shall be
6 immediately due and payable to the county or counties in which the
7 property was located when exempted.

8 (b) For a tier 2 large data center project, any personal property
9 tax that would have been due except for the exemption under the Nebraska
10 Advantage Act, together with interest at the rate provided in section
11 45-104.01 from the original delinquency date of the tax that would have
12 been due until the date paid, to the extent it becomes due under this
13 section, shall be considered delinquent and shall be immediately payable
14 to the county or counties in which the property was located when
15 exempted.

16 (c) All amounts received by a county under this section shall be
17 allocated to each taxing unit levying taxes on tangible personal property
18 in the county in the same proportion that the levy on tangible personal
19 property of such taxing unit bears to the total levy of all of such
20 taxing units; ~~-~~

21 (7) Notwithstanding any other limitations contained in the laws of
22 this state, collection of any taxes deemed to be underpayments by this
23 section shall be allowed for a period of three years after the end of the
24 entitlement period; ~~-~~

25 (8) Any amounts due under this section shall be recaptured
26 notwithstanding other allowable credits and shall not be subsequently
27 refunded under any provision of the Nebraska Advantage Act unless the
28 recapture was in error; and ~~-~~

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

1 Sec. 23. For applications filed on or after January 1, 2018:

2 (1)(a) If the taxpayer fails either to meet the required levels or
3 required wages for the applicable agreement by the end of the fourth year
4 after the end of the year the application was submitted for a tier 1,
5 tier 3, or tier 6 agreement or by the end of the sixth year after the end
6 of the year the application was submitted for a tier 2, tier 4, or tier 5
7 agreement or to maintain the required levels and required wages for the
8 entire entitlement period, all or a portion of the incentives set forth
9 in the Nebraska Advantage Act shall be recaptured or disallowed.

10 (b) In the case of a taxpayer who has failed to meet the required
11 levels or required wages within the required time period, all reduction
12 in the personal property tax because of the act shall be recaptured;

13 (2) In the case of a taxpayer who has failed to maintain the
14 required levels or required wages for the entire entitlement period, any
15 reduction in the personal property tax, any refunds in tax allowed under
16 subdivision (2) of section 19 of this act, and any refunds or reduction
17 in tax allowed because of the use of a credit allowed under section 19 of
18 this act shall be partially recaptured from either the taxpayer or the
19 owner of the improvement to real estate and any carryovers of credits
20 shall be partially disallowed. The amount of the recapture shall be a
21 percentage equal to the number of years the taxpayer did not maintain the
22 employment, investment, or wages at or above the required levels or
23 required wages divided by the number of years of the entitlement period
24 multiplied by the refunds allowed, reduction in personal property tax,
25 the credits used, and the remaining carryovers. In addition, the last
26 remaining year of personal property tax exemption shall be disallowed for
27 each year the taxpayer did not maintain such employment, investment, or
28 wages at or above the required levels or required wages;

29 (3) In the case of a taxpayer qualified under tier 5 who has failed
30 to maintain the average number of equivalent employees at the qualified
31 locations at the end of the six years following the year the taxpayer

1 attained the required amount of investment, any refunds in tax allowed
2 under subdivision (2) of section 19 of this act or any reduction in the
3 personal property tax under section 19 of this act shall be partially
4 recaptured from the taxpayer. The amount of recapture shall be the total
5 amount of refunds and reductions in tax allowed for all years times the
6 reduction in the average number of equivalent employees employed at the
7 end of the entitlement period compared to the number of equivalent
8 employees employed in the base year divided by the number of equivalent
9 employees employed in the base year. For purposes of this subdivision,
10 the average number of equivalent employees shall be calculated at the end
11 of the entitlement period by adding the number of equivalent employees in
12 the year the taxpayer attains the required level of investment and each
13 of the next following six years and dividing the result by seven;

14 (4) If the taxpayer receives any refunds or reduction in tax to
15 which the taxpayer was not entitled or which were in excess of the amount
16 to which the taxpayer was entitled, the refund or reduction in tax shall
17 be recaptured separate from any other recapture otherwise required by
18 this section. Any amount recaptured under this subdivision shall be
19 excluded from the amounts subject to recapture under other subdivisions
20 of this section;

21 (5) Any refunds or reduction in tax due, to the extent required to
22 be recaptured, shall be deemed to be an underpayment of the tax and shall
23 be immediately due and payable. When tax benefits were received in more
24 than one year, the tax benefits received in the most recent year shall be
25 recovered first followed by the benefits received in earlier years up to
26 the extent of the required recapture;

27 (6)(a) Except as provided in subdivision (6)(b) of this section, any
28 personal property tax that would have been due except for the exemption
29 allowed under the Nebraska Advantage Act, to the extent it becomes due
30 under this section, shall be considered delinquent and shall be
31 immediately due and payable to the county or counties in which the

1 property was located when exempted.

2 (b) For a tier 2 large data center agreement, any personal property
3 tax that would have been due except for the exemption under the Nebraska
4 Advantage Act, together with interest at the rate provided in section
5 45-104.01 from the original delinquency date of the tax that would have
6 been due until the date paid, to the extent it becomes due under this
7 section, shall be considered delinquent and shall be immediately payable
8 to the county or counties in which the property was located when
9 exempted.

10 (c) All amounts received by a county under this section shall be
11 allocated to each taxing unit levying taxes on tangible personal property
12 in the county in the same proportion that the levy on tangible personal
13 property of such taxing unit bears to the total levy of all of such
14 taxing units;

15 (7) Notwithstanding any other limitations contained in the laws of
16 this state, collection of any taxes deemed to be underpayments by this
17 section shall be allowed for a period of three years after the end of the
18 entitlement period;

19 (8) Any amounts due under this section shall be recaptured
20 notwithstanding other allowable credits and shall not be subsequently
21 refunded under any provision of the Nebraska Advantage Act unless the
22 recapture was in error; and

23 (9) The recapture required by this section shall not occur if the
24 failure to maintain the required levels or required wages was caused by
25 an act of God or national emergency.

26 Sec. 24. Section 77-5728, Revised Statutes Cumulative Supplement,
27 2016, is amended to read:

28 77-5728 (1) The incentives allowed under the Nebraska Advantage Act
29 shall not be transferable except in the following situations:

30 (a) Any credit allowable to a partnership, a limited liability
31 company, a subchapter S corporation, a cooperative, including a

1 cooperative exempt under section 521 of the Internal Revenue Code of
2 1986, as amended, a limited cooperative association, or an estate or
3 trust may be distributed to the partners, members, shareholders, patrons,
4 or beneficiaries in the same manner as income is distributed for use
5 against their income tax liabilities, and such partners, members,
6 shareholders, or beneficiaries shall be deemed to have made an
7 underpayment of their income taxes for any recapture required by the
8 Nebraska Advantage Act ~~section 77-5727~~. A credit distributed shall be
9 considered a credit used and the partnership, limited liability company,
10 subchapter S corporation, cooperative, including a cooperative exempt
11 under section 521 of the Internal Revenue Code of 1986, as amended, a
12 limited cooperative association, estate, or trust shall be liable for any
13 repayment required by the Nebraska Advantage Act ~~section 77-5727~~; and

14 (b) The incentives previously allowed and the future allowance of
15 incentives may be transferred when a project or covered by an agreement,
16 as applicable, is transferred in its entirety by sale or lease to another
17 taxpayer or in an acquisition of assets qualifying under section 381 of
18 the Internal Revenue Code of 1986, as amended.

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

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

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

1 (5) The Department of Revenue may disclose information to the
2 acquiring taxpayer about the agreement ~~project~~ and prior benefits that is
3 reasonably necessary to determine the future incentives and liabilities
4 ~~of the project.~~

5 Sec. 25. Section 77-5731, Revised Statutes Cumulative Supplement,
6 2016, is amended to read:

7 77-5731 (1) The Tax Commissioner shall submit electronically an
8 annual report to the Legislature no later than July 15 of each year. The
9 Department of Revenue shall, on or before September 1 of each year,
10 appear at a joint hearing of the Appropriations Committee of the
11 Legislature and the Revenue Committee of the Legislature and present the
12 report. Any supplemental information requested by three or more committee
13 members shall be presented within thirty days after the request.

14 (2) The report shall list (a) the agreements which have been signed
15 during the previous year, (b) the agreements which are still in effect,
16 (c) the identity of each taxpayer who is party to an agreement, and (d)
17 the location of each project or each qualified location, as applicable.

18 (3) The report shall also state, for taxpayers who are parties to
19 agreements, by industry group (a) the specific incentive options applied
20 for under the Nebraska Advantage Act, (b) the refunds allowed on the
21 investment, (c) the credits earned, (d) the credits used to reduce the
22 corporate income tax and the credits used to reduce the individual income
23 tax, (e) the credits used to obtain sales and use tax refunds, (f) the
24 credits used against withholding liability, (g) the number of jobs
25 created under the act, (h) the expansion of capital investment, (i) the
26 estimated wage levels of jobs created under the act subsequent to the
27 application date, (j) the total number of qualified applicants, (k) the
28 projected future state revenue gains and losses, (l) the sales tax
29 refunds owed, (m) the credits outstanding under the act, (n) the value of
30 personal property exempted by class in each county under the act, (o) the
31 value of property for which payments equal to property taxes paid were

1 allowed in each county, and (p) the total amount of the payments.

2 (4) In estimating the projected future state revenue gains and
3 losses, the report shall detail the methodology utilized, state the
4 economic multipliers and industry multipliers used to determine the
5 amount of economic growth and positive tax revenue, describe the analysis
6 used to determine the percentage of new jobs attributable to the Nebraska
7 Advantage Act assumption, and identify limitations that are inherent in
8 the analysis method.

9 (5) The report shall provide an explanation of the audit and review
10 processes of the department in approving and rejecting applications or
11 the grant of incentives and in enforcing incentive recapture. The report
12 shall also specify the median period of time between the date of
13 application and the date the agreement is executed for all agreements
14 executed by December 31 of the prior year.

15 (6) The report shall provide information on project-specific or
16 agreement-specific total incentives used every two years for each
17 approved project. The report shall disclose (a) the identity of the
18 taxpayer, (b) the location of the project or the qualified location, as
19 applicable, and (c) the total credits used and refunds approved during
20 the immediately preceding two years expressed as a single, aggregated
21 total. The incentive information required to be reported under this
22 subsection shall not be reported for the first year the taxpayer attains
23 the required employment and investment thresholds. The information on
24 first-year incentives used shall be combined with and reported as part of
25 the second year. Thereafter, the information on incentives used for
26 succeeding years shall be reported for each project every two years
27 containing information on two years of credits used and refunds approved.
28 The incentives used shall include incentives which have been approved by
29 the department, but not necessarily received, during the previous two
30 years.

31 (7) The report shall include an executive summary which shows

1 aggregate information for all projects for which the information on
2 incentives used in subsection (6) of this section is reported as follows:

3 (a) The total incentives used by all taxpayers for projects detailed in
4 subsection (6) of this section during the previous two years; (b) the
5 number of projects; (c) the new jobs at the project for which credits
6 have been granted; (d) the average compensation paid employees in the
7 state in the year of application and for the new jobs at the project; and
8 (e) the total investment for which incentives were granted. The executive
9 summary shall summarize the number of states which grant investment tax
10 credits, job tax credits, sales and use tax refunds for qualified
11 investment, and personal property tax exemptions and the investment and
12 employment requirements under which they may be granted.

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

15 Sec. 26. Section 77-5734, Revised Statutes Cumulative Supplement,
16 2016, is amended to read:

17 77-5734 The Department of Revenue shall, on or before the fifteenth
18 day of October and February of every year and the fifteenth day of April
19 in odd-numbered years, make an estimate of the amount of sales and use
20 tax refunds to be paid under the Nebraska Advantage Act during the fiscal
21 years to be forecast under section 77-27,158. The estimate shall be based
22 on the most recent data available, including pending and approved
23 applications and updates thereof as are required by ~~subdivisions (2)(e)~~
24 ~~and (6)(e) of section 77-5723 and section 16 of this act.~~ The estimate
25 shall be forwarded to the Legislative Fiscal Analyst and the Nebraska
26 Economic Forecasting Advisory Board and made a part of the advisory
27 forecast required by section 77-27,158.

28 Sec. 27. The Department of Labor shall collect and report wage data
29 by classifications under the North American Industry Classification
30 System on a quarterly basis.

31 Sec. 28. Original sections 77-5706, 77-5708, 77-5710, 77-5714,

1 77-5717, 77-5719.01, and 77-5724, Reissue Revised Statutes of Nebraska,
2 and sections 77-27,144, 77-5701, 77-5703, 77-5715, 77-5723, 77-5725,
3 77-5726, 77-5727, 77-5728, 77-5731, and 77-5734, Revised Statutes
4 Cumulative Supplement, 2016, are repealed.

5 Sec. 29. Since an emergency exists, this act takes effect when
6 passed and approved according to law.