

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 592

Introduced by Crawford, 45.

Read first time January 18, 2017

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-5725 and 77-5726, Revised Statutes Cumulative Supplement, 2016;
- 3 to change the tax incentives available under the Nebraska Advantage
- 4 Act; to harmonize provisions; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5725, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 77-5725 (1) Applicants may qualify for benefits under the Nebraska
4 Advantage Act in one of six tiers:

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

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

26 (c) Tier 3, the hiring of at least thirty new employees. There shall
27 be no new project applications for benefits under this tier filed after
28 December 31, 2020. All complete project applications filed on or before
29 December 31, 2020, shall be considered by the Tax Commissioner and
30 approved if the project and taxpayer qualify for benefits. Agreements may
31 be executed with regard to completed project applications filed on or

1 before December 31, 2020. All project agreements pending, approved, or
2 entered into before such date shall continue in full force and effect;

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

12 (e) Tier 5, (i) investment in qualified property of at least thirty
13 million dollars or (ii) for the production of electricity by using one or
14 more sources of renewable energy to produce electricity for sale as
15 described in subdivision (1)(j) of section 77-5715, investment in
16 qualified property of at least twenty million dollars. Failure to
17 maintain an average number of equivalent employees as defined in section
18 77-5727 greater than or equal to the number of equivalent employees in
19 the base year shall result in a partial recapture of benefits. There
20 shall be no new project applications for benefits under this tier filed
21 after December 31, 2020. All complete project applications filed on or
22 before December 31, 2020, shall be considered by the Tax Commissioner and
23 approved if the project and taxpayer qualify for benefits. Agreements may
24 be executed with regard to completed project applications filed on or
25 before December 31, 2020. All project agreements pending, approved, or
26 entered into before such date shall continue in full force and effect;
27 and

28 (f) Tier 6, investment in qualified property of at least ten million
29 dollars and the hiring of at least seventy-five new employees or the
30 investment in qualified property of at least one hundred million dollars
31 and the hiring of at least fifty new employees. There shall be no new

1 project applications for benefits under this tier filed after December
2 31, 2020. All complete project applications filed on or before December
3 31, 2020, shall be considered by the Tax Commissioner and approved if the
4 project and taxpayer qualify for benefits. Agreements may be executed
5 with regard to completed project applications filed on or before December
6 31, 2020. All project agreements pending, approved, or entered into
7 before such date shall continue in full force and effect.

8 (2) When the taxpayer has met the required levels of employment and
9 investment contained in the agreement for a tier 1, tier 2, tier 4, tier
10 5, or tier 6 project, the taxpayer shall be entitled to the following
11 incentives:

12 (a) Except as provided in subsection (9) of this section, a A refund
13 of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6
14 project or a refund of one-half of all sales and use taxes for a tier 1
15 project paid under the Local Option Revenue Act, the Nebraska Revenue Act
16 of 1967, and sections 13-319, 13-324, and 13-2813 from the date of the
17 application through the meeting of the required levels of employment and
18 investment for all purchases, including rentals, of:

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

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

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

30 (iv) Tangible personal property by a contractor or repairperson
31 after appointment as a purchasing agent of the taxpayer when such

1 property is annexed to, but not incorporated into, real estate as a part
2 of a project. The refund shall be based on the cost of materials subject
3 to the sales and use tax that were annexed to real estate; and

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

11 (b) Except as provided in subsection (9) of this section, a A refund
12 of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6
13 project or a refund of one-half of all sales and use taxes for a tier 1
14 project paid under the Local Option Revenue Act, the Nebraska Revenue Act
15 of 1967, and sections 13-319, 13-324, and 13-2813 on the types of
16 purchases, including rentals, listed in subdivision (a) of this
17 subsection for such taxes paid during each year of the entitlement period
18 in which the taxpayer is at or above the required levels of employment
19 and investment.

20 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier
21 4 project shall be entitled to a credit equal to three percent times the
22 average wage of new employees times the number of new employees if the
23 average wage of the new employees equals at least sixty percent of the
24 Nebraska average annual wage for the year of application. The credit
25 shall equal four percent times the average wage of new employees times
26 the number of new employees if the average wage of the new employees
27 equals at least seventy-five percent of the Nebraska average annual wage
28 for the year of application. The credit shall equal five percent times
29 the average wage of new employees times the number of new employees if
30 the average wage of the new employees equals at least one hundred percent
31 of the Nebraska average annual wage for the year of application. The

1 credit shall equal six percent times the average wage of new employees
2 times the number of new employees if the average wage of the new
3 employees equals at least one hundred twenty-five percent of the Nebraska
4 average annual wage for the year of application. For computation of such
5 credit:

6 (a) Average annual wage means the total compensation paid to
7 employees during the year at the project who are not base-year employees
8 and who are paid wages equal to at least sixty percent of the Nebraska
9 average weekly wage for the year of application, excluding any
10 compensation in excess of one million dollars paid to any one employee
11 during the year, divided by the number of equivalent employees making up
12 such total compensation;

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

19 (c) Nebraska average annual wage means the Nebraska average weekly
20 wage times fifty-two.

21 (4) Any taxpayer who qualifies for a tier 6 project shall be
22 entitled to a credit equal to ten percent times the total compensation
23 paid to all employees, other than base-year employees, excluding any
24 compensation in excess of one million dollars paid to any one employee
25 during the year, employed at the project.

26 (5) Any taxpayer who has met the required levels of employment and
27 investment for a tier 2 or tier 4 project shall receive a credit equal to
28 ten percent of the investment made in qualified property at the project.
29 Any taxpayer who has met the required levels of investment and employment
30 for a tier 1 project shall receive a credit equal to three percent of the
31 investment made in qualified property at the project. Any taxpayer who

1 has met the required levels of investment and employment for a tier 6
2 project shall receive a credit equal to fifteen percent of the investment
3 made in qualified property at the project.

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

8 (7) The credit prescribed in subsection (5) of this section shall
9 also be allowable during the first year of the entitlement period for
10 investment in qualified property at the project after the date of the
11 application and before the required levels of employment and investment
12 were met.

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

19 (b)(i) A taxpayer who has met the required levels of employment and
20 investment for a tier 4 project shall receive the exemption of property
21 in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer
22 who has met the required levels of employment and investment for a tier 6
23 project shall receive the exemption of property in subdivisions (8)(c)
24 (ii), (iii), (iv), and (v) of this section. Such property shall be
25 eligible for the exemption from the first January 1 following the end of
26 the year during which the required levels were exceeded through the ninth
27 December 31 after the first year property included in subdivisions (8)(c)
28 (ii), (iii), (iv), and (v) of this section qualifies for the exemption.

29 (ii) A taxpayer who has filed an application that describes a tier 2
30 large data center project or a project under tier 4 or tier 6 shall
31 receive the exemption of property in subdivision (8)(c)(i) of this

1 section beginning with the first January 1 following the acquisition of
2 the property. The exemption shall continue through the end of the period
3 property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of
4 this section qualifies for the exemption.

5 (iii) A taxpayer who has filed an application that describes a tier
6 2 large data center project or a tier 5 project that is sequential to a
7 tier 2 large data center project for which the entitlement period has
8 expired shall receive the exemption of all property in subdivision (8)(c)
9 of this section beginning any January 1 after the acquisition of the
10 property. Such property shall be eligible for exemption from the tax on
11 personal property from the January 1 preceding the first claim for
12 exemption approved under this subdivision through the ninth December 31
13 after the year the first claim for exemption is approved.

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

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

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

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

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

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

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

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

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

1 shall determine whether a taxpayer is eligible to obtain exemption for
2 personal property based on the criteria for exemption and the eligibility
3 of each item listed for exemption and, on or before August 1, certify
4 such to the taxpayer and to the affected county assessor.

5 (9) For applications filed on or after January 1, 2018, refunds of
6 sales and use taxes paid under the Local Option Revenue Act or under
7 sections 13-319, 13-324, and 13-2813 shall no longer be available as an
8 incentive under the Nebraska Advantage Act.

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

14 (b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier
15 5 projects described in subdivision (1)(e)(ii) of this section, beginning
16 October 1, 2006, and each October 1 thereafter, the average Producer
17 Price Index for all commodities, published by the United States
18 Department of Labor, Bureau of Labor Statistics, for the most recent
19 twelve available periods shall be divided by the Producer Price Index for
20 the first quarter of 2006 and the result multiplied by the applicable
21 investment threshold. The investment thresholds shall be adjusted for
22 cumulative inflation since 2006.

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

30 (d) For a tier 2 large data center project, beginning October 1,
31 2012, and each October 1 thereafter, the average Producer Price Index for

1 all commodities, published by the United States Department of Labor,
2 Bureau of Labor Statistics, for the most recent twelve available periods
3 shall be divided by the Producer Price Index for the first quarter of
4 2012 and the result multiplied by the applicable investment threshold.
5 The investment thresholds shall be adjusted for cumulative inflation
6 since 2012.

7 (e) If the resulting amount is not a multiple of one million
8 dollars, the amount shall be rounded to the next lowest one million
9 dollars.

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

14 Sec. 2. Section 77-5726, Revised Statutes Cumulative Supplement,
15 2016, is amended to read:

16 77-5726 (1)(a) The credits prescribed in section 77-5725 for a year
17 shall be established by filing the forms required by the Tax Commissioner
18 with the income tax return for the taxable year which includes the end of
19 the year the credits were earned. The credits may be used and shall be
20 applied in the order in which they were first allowed. The credits may be
21 used after any other nonrefundable credits to reduce the taxpayer's
22 income tax liability imposed by sections 77-2714 to 77-27,135. Credits
23 may be used beginning with the taxable year which includes December 31 of
24 the year the required minimum levels were reached. The last year for
25 which credits may be used is the taxable year which includes December 31
26 of the last year of the carryover period. Any decision on how part of the
27 credit is applied shall not limit how the remaining credit could be
28 applied under this section.

29 (b) The taxpayer may use the credit provided in subsection (3) of
30 section 77-5725 to reduce the taxpayer's income tax withholding employer
31 or payor tax liability under section 77-2756 or 77-2757 to the extent

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

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

22 For a tier 6 project, the amount of credits used against income tax
23 withholding shall not exceed the withholding attributable to all
24 employees employed at the project, other than base-year employees and
25 excluding any compensation in excess of one million dollars paid to any
26 one employee during the year.

27 If the amount of credit used by the taxpayer against income tax
28 withholding exceeds this amount, the excess withholding shall be returned
29 to the Department of Revenue in the manner provided in section 77-2756,
30 such excess amount returned shall be considered unused, and the amount of
31 unused credits may be used as otherwise permitted in this section or

1 shall carry over to the extent authorized in subdivision (1)(e) of this
2 section.

3 (c) Credits may be used to obtain a refund of sales and use taxes
4 under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and
5 sections 13-319, 13-324, and 13-2813 which are not otherwise refundable
6 that are paid on purchases, including rentals, for use at the project for
7 a tier 1, tier 2, tier 3, or tier 4 project or for use within this state
8 for a tier 2 large data center project or a tier 6 project, except that
9 for applications filed on or after January 1, 2018, credits may not be
10 used to obtain a refund of sales and use taxes paid under the Local
11 Option Revenue Act or under sections 13-319, 13-324, and 13-2813.

12 (d) The credits earned for a tier 6 project may be used to obtain a
13 payment from the state equal to the real property taxes due after the
14 year the required levels of employment and investment were met and before
15 the end of the carryover period, for real property that is included in
16 such project and acquired by the taxpayer, whether by lease or purchase,
17 after the date the application was filed. Once the required levels of
18 employment and investment for a tier 2 large data center project have
19 been met, the credits earned for a tier 2 large data center project may
20 be used to obtain a payment from the state equal to the real property
21 taxes due after the year of application and before the end of the
22 carryover period, for real property that is included in such project and
23 acquired by the taxpayer, whether by lease or purchase, after the date
24 the application was filed. The payment from the state shall be made only
25 after payment of the real property taxes have been made to the county as
26 required by law. Payments shall not be allowed for any taxes paid on real
27 property for which the taxes are divided under section 18-2147 or 58-507.

28 (e) Credits may be carried over until fully utilized, except that
29 such credits may not be carried over more than nine years after the year
30 of application for a tier 1 or tier 3 project, fourteen years after the
31 year of application for a tier 2 or tier 4 project, or more than one year

1 past the end of the entitlement period for a tier 6 project.

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

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

8 (c) Refund claims for materials purchased by a purchasing agent
9 shall include:

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

11 (ii) The contract price; and

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

17 (B) For refunds under subdivision (2)(a)(iv) of section 77-5725, a
18 certification by the contractor or repairperson of the percentage of the
19 contract price that represents the cost of materials annexed to the
20 project and the percentage of the materials annexed to the project on
21 which sales and use taxes were paid to Nebraska after appointment as
22 purchasing agent.

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

31 (e) If a claim for a refund of sales and use taxes under the Local

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

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

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

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

1 Sec. 3. Original sections 77-5725 and 77-5726, Revised Statutes
2 Cumulative Supplement, 2016, are repealed.