

Nebraska Advantage Act

The Nebraska Department of Revenue (Department) began accepting Nebraska Advantage Act (also referred to as LB 312) project applications on January 1, 2006. Tier 6 applications were allowed beginning on April 18, 2008. A taxpayer involved in a qualifying business activity may file an application, which summarizes a plan of expansion consistent with the investment and/or employment requirements of one of the six available tiers. A new employee must earn the minimum required annual wage to count toward the full-time equivalent (FTE) calculation. The benefits earned under the Nebraska Advantage Act depend on the amount of expansion and varies by tier. The minimum investment and employment growth required as of December 31, 2008, and the benefits by tier are summarized below.

	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	
Minimum Investment Growth	\$1M	\$3M	n/a	\$10M	\$31M	\$10M	\$100M
Minimum Employment Growth	10 FTE	30 FTE	30 FTE	100 FTE	Maintenance	75FTE	50FTE
Direct Refund	50%	100%	n/a	100%	100%	100%	
Investment Credit	3%	10%	n/a	10%	n/a	15%	
Compensation Credit	3 to 6%	3 to 6%	3 to 6%	3 to 6%	n/a	10%	
Property Tax Exemption	n/a	n/a	n/a	Yes	Yes*	Yes	

* Limited to mainframe business computers and specific peripheral equipment that require environmental controls of temperature and power that are used by a business operating as an Internet web portal.

The required wage rate and investment are indexed annually. The following table provides information on the required wage rate and investment thresholds for applications in each calendar year.

	Required Wage Level		Required Investment and Employment Threshold					
	Tier 1 - 4	Tier 6*	Tier 1 10 FTE	Tier 2 30 FTE	Tier 4 100 FTE	Tier 5 n/a	Tier 6 75 FTE 50 FTE	
2006	\$18,905	n/a	\$1M	\$3M	\$10M	\$30M	n/a	n/a
2007	\$19,452	n/a	\$1M	\$3M	\$10M	\$30M	n/a	n/a
2008	\$20,281	\$50,702	\$1M	\$3M	\$10M	\$31M	\$10M	\$100M

*The Tier 6 wage requirement is equal to the greater of 200% of the county average weekly wage, or 150% of the state average weekly wage, for the year of application. The wage listed is 150% of the state average weekly wage. Wage levels for each county are available on the Department's Web site, http://www.revenue.ne.gov/incentiv/neb_adv/LB895_wage_level.htm.

Description of Benefits:

Direct Refunds. Refunds of properly paid Nebraska and local option sales and use taxes paid on purchases of qualified property for use at the project, or on aircraft for use in connection with the project, which are placed in service at the project during the attainment and entitlement period.

Investment Credit. A credit equal to three percent (Tier 1), ten percent (Tiers 2 and 4), or 15 percent (Tier 6) of the investment in qualified property placed in service at the project during the attainment or entitlement period.

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Compensation Credit:

Tiers 1, 2, 3 and 4. A credit, each year of the entitlement period, equal to three to six percent times the average annual wage of new employees at the project earning the required wage times the number of new FTE employees.

Tier 6. A credit, each year of the entitlement period, equal to ten percent times the taxable compensation of all non-base year employees.

Property Tax Exemption:

Tier 4. Turbine powered aircraft, acquired after the date of application, may be exempted from the first January 1 following the date of acquisition of the property through the ninth year after the project attains the minimum required investment level of \$10 million in new investment and 100 new, full-time equivalent employees. Mainframe business computers and specific peripherals that require environmental controls of temperature and power; business equipment involved directly in the processing of agricultural products; and distribution facility equipment used to store and move product may be exempted from the first January 1 following the end of the year during which the required levels were exceeded and the next nine years.

Tier 5. Mainframe business computers and specific peripherals that require environmental controls of temperature and power may be exempted from the first January 1 following the end of the year during which the required levels were exceeded and the next nine years. The property tax exemption is only available to a taxpayer who has a project for an Internet web portal.

Tier 6. Turbine powered aircraft, acquired after the date of application, may be exempted from the first January 1 following the date of acquisition of the property through the ninth year after the project attains the minimum required investment and new, full-time equivalent employee levels. All personal property at the project may be exempted from the first January 1 following the end of the year during which the required levels were exceeded and the next nine years.

Credit Usage:

Tiers 1, 2, and 4. The investment and compensation credits may be used against the unitary income tax liability of the applicant from the year of qualification through the end of the project and for refunds of otherwise non-refundable sales and use taxes paid on purchases at the project from the beginning of the year after the credits are earned through the end of the project.

The compensation credit may be used against the portion of the Nebraska payroll withholding attributable to the new employees. The compensation credit may be used from the beginning the year after the credits are earned through the end of the project.

Tier 3. The compensation credit may be used against the portion of the Nebraska payroll withholding attributable to the new employees. The compensation credit may be used from the beginning the year after the credits are earned through the end of the project.

Tier 6. The investment and compensation credits may be used against the unitary income tax liability of the applicant from the year of qualification through the end of the project, for refunds of otherwise non-refundable sales and use taxes paid on purchases in Nebraska from the beginning of the year after qualification through the end of the project. Compensation credits may also be used against the portion of the Nebraska payroll withholding attributable to the new non-base year employees from the year after qualification through the end of the project.

Audit and Review Procedures

Application. A taxpayer submits an application with supporting documents, including an application fee, to the Department. Each application is reviewed for assurance that the applicant is an eligible taxpayer, and the plan relates to a qualifying business activity at interdependent locations. There are 106 active, signed agreements. Other applications are being reviewed, and the Department is in various stages of correspondence with taxpayers for additional information or clarification of their application.

Audit. When the taxpayer notifies the Department that it has reached the qualification levels, an audit is conducted to confirm the attainment of the minimum required levels of investment and/or employment, verification of the credits earned in the attainment period, and the accuracy of the initial direct refund. The Department reviews annual filings for tax benefits for reasonableness as compared to other tax filings. The Department also conducts periodic maintenance audits of selected taxpayers and projects to ensure that the project has continued to comply with the minimum levels of investment and employment necessary for the selected tier, and to verify the propriety of the credits reported and benefits received. The confirmation of attainment of the minimum required levels of new investment and full-time equivalent employees required for the property tax exemption may be done as part of the original qualification audit for a Tier 4, Tier 5 or Tier 6 project, or as part of a maintenance audit of a subsequent year.

Claims for Benefits.

The taxpayer files claims for sales and use tax paid during the entitlement and carryover periods. All claims are reviewed to confirm the proper payment of tax on items eligible for benefits. The review of the claim may involve testing of certain transactions based on dollar scopes or issues.

The taxpayer must file a claim for the personal property tax benefits on or before May 1 with the Property Tax Administrator and the county assessor. The Department determines whether the taxpayer is eligible for the exemption based on meeting the required levels of investment and employment. The Property Tax Administrator determines whether the property falls within the classes of exempt personal property. A Tier 6 project may elect to use credits for a refund of property taxes paid on real property purchased after the date of application and used at the project.

The taxpayer files Nebraska income tax and payroll withholding returns claiming the use of credits as an offset of all, or a portion, of the taxes due. The Department will review and approve the credit usage. The Department also reviews or audits the information to ensure that credits were only used as an offset against the withholding attributable to the appropriate employees.

Comparison of Nebraska Tax Incentive Programs to Those Available in Other States

States offer many types of tax incentives for businesses. The table on the following page summarizes tax incentives in states that somewhat follow the Nebraska model of granting tax incentives. For example, qualification for tax incentives is not dependent upon the location of a project in an enterprise zone or other limited geographic area. Thus, states that offer jobs or investment credits to businesses, but only to those who locate in a limited area, are not counted. States that offer tax incentives, but have different qualification levels depending upon geography, are counted provided that a project could qualify, at some level, in every part of the state.

States may also limit qualification for incentives to targeted industries. Nebraska does this, and the table counts those states where incentives are limited only to targeted activities. Finally, Nebraska refunds the sales and use tax on qualified investments, but some states refund only a portion of the tax. These states are counted as having a refund. Some states have broader sales and use tax exemptions than Nebraska, but do not provide a refund of any taxes paid. Tax exemptions are outside the scope of this report, and states are not counted if they do not provide at least a partial refund of sales and use taxes paid on qualified investment.