



Economic Development Tax Incentives -- Subsequent Agreements.
AT THE END OF A PROJECT'S ENTITLEMENT PERIOD, A TAXPAYER MAY ENTER INTO A SUBSEQUENT AGREEMENT UNDER THE EMPLOYMENT AND INVESTMENT GROWTH ACT, FOR A PROJECT WHICH MAY INCLUDE THE SAME ACTIVITIES AS THE PREVIOUS PROJECT.

Advice has been requested regarding whether a taxpayer may enter into a subsequent project agreement under the Employment and Investment Growth Act, which may include the same activities as a previous project.

At the end of a current project's entitlement period, a taxpayer may enter into a subsequent agreement for another project including the same activities as the previous project. In order to retain and use all of the benefits earned under the previous project, the application for the subsequent agreement must be filed after the previous project's entitlement period has expired.

Prior to achieving the minimum required levels of employment and investment for the subsequent project, a taxpayer may obtain refunds of sales or use tax paid on qualified and non-qualified property falling within the scope of the subsequent project, by using any remaining credits which were earned under the previous project agreement. These carryover credits may continue to be used in this manner until they are fully used or until the carryover period of the previous project expires, whichever occurs first. Credits from the previous and subsequent projects will be accounted for and used separately. In the event that the subsequent project would fall into recapture, only the benefits earned in the subsequent project would be subject to the applicable recapture provisions.

When the taxpayer achieves the minimum qualifying levels of employment and investment required for the subsequent project, it can only receive a direct refund on qualified property for which a refund has not been previously claimed. If a refund of sales or use tax is received on qualified property falling within the scope of the subsequent project by using carryover credits from the previous project, then no direct refund is available on the same property. Credits from the previous project will not be reinstated.

Alternatively, a taxpayer may intentionally file, prior to the end of the current project's entitlement period, a new project application covering the same activities as the previous project. The application must clearly distinguish between the two projects. In this event, the taxpayer will have two separate overlapping projects. Due to the existence of the two

separate projects, the taxpayer may become subject to recapture provisions if the employment and investment levels of the previous project are not maintained.

Pursuant to section 77-4104(6) of the Nebraska Revised Statutes, no employment, investment, or credits may be included or used in more than one of these overlapping projects. Thus, credits from the previous project may not be used to obtain sales or use tax refunds for any purchases falling within the scope of the subsequent project. Carryover credits remaining from the previous project would only be available for use against the taxpayer's income tax liability.

APPROVED:



M. Berri Balka
State Tax Commissioner

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