

LEGISLATIVE BILL 366

Approved by the Governor May 25, 2021

Introduced by Briese, 41; Brandt, 32; McCollister, 20.

A BILL FOR AN ACT relating to the Nebraska Advantage Microenterprise Tax Credit Act; to amend sections 77-5903, 77-5906, and 77-5907, Reissue Revised Statutes of Nebraska, and section 77-5905, Revised Statutes Cumulative Supplement, 2020; to redefine a term; to change the termination date of the act; to change provisions relating to tax credit amounts and reporting requirements; to provide for applicability; and to repeal the original sections.

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

Section 1. Section 77-5903, Reissue Revised Statutes of Nebraska, is amended to read:

77-5903 For purposes of the Nebraska Advantage Microenterprise Tax Credit Act:

(1) Actively engaged in the operation of a microbusiness means personal involvement on a continuous basis in the daily management and operation of the business;

(2) Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(3) Microbusiness means any business employing five or fewer equivalent employees at the time of application. Microbusiness does not include a farm or livestock operation unless (a) the person actively engaged in the operation of the microbusiness has a net worth of not more than five hundred thousand dollars, including any holdings by a spouse or dependent, based on fair market value, or (b) the investment or employment is in the processing or marketing of agricultural products, aquaculture, agricultural tourism, or the production of fruits, herbs, tree products, vegetables, tree nuts, dried fruits, organic crops, or nursery crops;

(4) New employment means the amount by which the total compensation plus the employer cost for health insurance for employees paid during the tax year to or for employees who are Nebraska residents exceeds the total compensation paid plus the employer cost for health insurance for employees to or for employees who are Nebraska residents in the tax year prior to application. New employment does not include compensation to any employee that is in excess of one hundred fifty percent of the Nebraska average weekly wage. Nebraska average weekly wage means the most recent average weekly wage paid by all employers as reported by October 1 by the Department of Labor;

(5) New investment means the increase during the tax year over the year prior to the application in the applicant's (a) purchases of buildings and depreciable personal property located in Nebraska, (b) expenditures on repairs and maintenance on property located in Nebraska, neither subdivision (a) or (b) of this subdivision to include vehicles required to be registered for operation on the roads and highways of this state, and (c) expenditures on advertising, legal, and professional services. If the buildings or depreciable personal property is leased, the amount of new investment shall be the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not to exceed ten years;

(6) Related persons means (a) any corporation, partnership, limited liability company, cooperative, including cooperatives exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture which is or would otherwise be a member of the same unitary group, if incorporated, (b) an individual and a corporation if more than fifty percent in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for such individual, (c) a fiduciary of a trust and a corporation if more than fifty percent in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust, (d) a corporation and a partnership if the same persons own (i) more than fifty percent in value of the outstanding stock of the corporation and (ii) more than fifty percent of the capital interest, or the profits interest, in the partnership, (e) a subchapter S corporation and another subchapter S corporation if the same persons own more than fifty percent in value of the outstanding stock of each corporation, (f) a subchapter S corporation and a C corporation if the same persons own more than fifty percent in value of the outstanding stock of each corporation, (g) a partnership and a person owning, directly or indirectly, more than fifty percent of the capital interest, or the profits interest, in such partnership, (h) two partnerships in which the same persons own, directly or indirectly, more than fifty percent of the capital interests or profits interests or any person who is considered to be a related person under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended, and (i) (b) any individual who is a spouse, parent, if the taxpayer is a minor, or minor son or daughter of the taxpayer; and

(7) Taxpayer means any person subject to the income tax imposed by the

Nebraska Revenue Act of 1967, any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of such entity are, subject to such tax, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such tax.

The changes made to this section by Laws 2008, LB 177, shall be operative for all applications for benefits received on or after July 18, 2008.

The changes made to this section by this legislative bill shall apply to all applications for benefits received on or after the effective date of this act.

Sec. 2. Section 77-5905, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-5905 (1) If the Department of Revenue determines that an application meets the requirements of section 77-5904 and that the investment or employment is eligible for the credit and (a) the applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation upon its establishment, (b) the applicant will make new investment or employment in the microbusiness, and (c) the new investment or employment will create new income or jobs, the department shall approve the application and authorize tentative tax credits to the applicant within the limits set forth in this section and certify the amount of tentative tax credits approved for the applicant. Applications for tax credits shall be considered in the order in which they are received.

(2) The department may approve applications up to the adjusted limit for each calendar year beginning January 1, 2006, through December 31, ~~2032~~ 2022. After applications totaling the adjusted limit have been approved for a calendar year, no further applications shall be approved for that year. The adjusted limit in a given year is two million dollars plus tentative tax credits that were not granted by the end of the preceding year. Tax credits shall not be allowed for a taxpayer receiving benefits under the Employment and Investment Growth Act, the Nebraska Advantage Act, the Nebraska Advantage Rural Development Act, or the ImagiNE Nebraska Act.

Sec. 3. Section 77-5906, Reissue Revised Statutes of Nebraska, is amended to read:

77-5906 (1) Taxpayers shall be entitled to refundable tax credits for equal to twenty percent of the taxpayer's new investment or new employment in the microbusiness during the tax year. The tax credits shall be equal to:

- (a) Twenty percent of the taxpayer's new investment; and
- (b) Twenty percent of the taxpayer's new employment.

(2) The total amount of tax credits shall not to exceed the amount of tentative tax credits approved by the department under section 77-5905.

(3) The taxpayer shall claim the tax credit by filing a form developed by the Tax Commissioner and attaching the tentative tax credit certification granted by the department. Tentative tax credits expire after the end of the tax year following the year the tentative tax credit was certified.

(4) The total lifetime tax credits claimed by any one taxpayer and any related person under the Nebraska Advantage Microenterprise Tax Credit Act shall be limited to twenty ~~ten~~ thousand dollars.

(5) Interest shall not be allowed on any taxes refunded under the act.

(6) The changes made to this section by this legislative bill shall apply to all applications for benefits received on or after the effective date of this act.

Sec. 4. Section 77-5907, Reissue Revised Statutes of Nebraska, is amended to read:

77-5907 (1) The Tax Commissioner shall prepare a report identifying the following aggregate amounts for the previous calendar year: (a) ~~(1)~~ The amount of projected employment and investment anticipated by taxpayers receiving tentative tax credits and the tentative tax credits granted; (b) ~~(2)~~ the actual amount of employment and investment made by taxpayers that were granted tentative tax credits in the previous calendar year; (c) ~~(3)~~ the tax credits used; and (d) ~~(4)~~ the tentative tax credits that expired. The report shall be issued on or before July 15, 2007, and each July 15 thereafter. The Department of Revenue shall, on or before September 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) Beginning with applications filed on or after the effective date of this act, the report shall provide information on project-specific total credits used every two years for each approved application and shall disclose (a) the identity of the taxpayer, (b) the location or locations where the taxpayer is earning credits, (c) the new investment or new employment that was actually produced by the taxpayer to earn credits, and (d) the total credits used during the immediately preceding two years, expressed as a single, aggregated total.

(3) No information shall be provided in the report that is protected by

state or federal confidentiality laws.

Sec. 5. Original sections 77-5903, 77-5906, and 77-5907, Reissue Revised Statutes of Nebraska, and section 77-5905, Revised Statutes Cumulative Supplement, 2020, are repealed.