

## LEGISLATIVE BILL 264

Approved by the Governor April 2, 1997

Introduced by Warner, 25; Robinson, 16

AN ACT relating to revenue and taxation; to amend sections 77-4103, 77-4901, 77-4909, and 77-4924, Reissue Revised Statutes of Nebraska, and section 58-503, Revised Statutes Supplement, 1996; to redefine terms related to tax incentive programs; to provide for applicability of changes; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 58-503, Revised Statutes Supplement, 1996, is amended to read:

58-503. For purposes of the Nebraska Redevelopment Act, the following definitions apply:

- (1) Any term not otherwise defined has the same meaning as used in the Interlocal Cooperation Act;
- (2) Area application means the area application in section 58-504;
- (3) Area of operation means and includes the area within the corporate limits of the public body;
- (4) Base year means the year immediately preceding the year during which the project application was submitted;
- (5) Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the company or its predecessors during the base year and who is employed at the redevelopment project;
- (6) Blighted and substandard area means an area either within a city or cities or up to ten miles outside of the area of operation of a city or cities of the metropolitan or primary class, up to six miles outside of the area of operation of a city or cities of the first class, and up to three miles outside of the area of operation of a city or cities of the second class or village or villages, or any combination thereof, in which by reason of (a) the existence of significant areas of unimproved or insufficiently developed land, (b) the lack of a significant number of new and growing business enterprises, (c) the lack of sufficient economic growth, (d) the dilapidation, deterioration, age, or obsolescence of buildings and improvements, (e) the lack of a state, regional, or local redevelopment plan or program, (f) the existence of significant conditions which prevent or do not promote economic growth within such area, (g) the lack of medical and health care facilities, (h) the lack of utilities and other government services infrastructure, or (i) any combination of such factors, there exists (i) insufficient safe, sanitary, and available housing for low-income and moderate-income families and persons, including, but not limited to, persons displaced by clearing of slums or blighted areas or by other public programs, (ii) job growth at less than the United States or midwest average job growth rates, (iii) average wages at less than the United States or midwest average wage levels, (iv) a net emigration of population, (v) population growth that is less than that of the United States or the midwest, (vi) the failure to utilize substantial land areas at their highest and best uses in comparison to other areas within such city or cities, (vii) an abundance of property that is not on the tax rolls at levels at least equal to industrial and residential valuation levels, or (viii) any combination of such results;
- (7) Board means a board consisting of the Governor, the State Treasurer, and the chairperson of the Nebraska Investment Council;
- (8) Bonds means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Nebraska Redevelopment Act;
- (9) City means any city or incorporated village of this state;
- (10) Company means any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, 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 are, subject to such taxes, and any other partnership, limited liability company, subchapter S corporation, or joint venture when the partners, owners, shareholders, or members are subject to such taxes;
- (11) Contracting public body means the city or joint entity that

enters into the project agreement with the company;

(12) Designated blighted and substandard area means an area that is a blighted and substandard area which the board designates as such under the Nebraska Redevelopment Act. Such area may include the area of operation of more than one taxing body;

(13) Employee means a person employed at the redevelopment project;

(14) 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;

(15) Governing body means the city council, board of trustees, other legislative body, or person or persons charged with governing the taxing body or contracting public body;

(16) Investment means the value of qualified property incorporated into or used at the project after the date of the application. For qualified property owned by the company, the value is the original cost of the property. For qualified property rented by the company, the value is the average net annual rent multiplied by the number of years of the lease for which the company was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building is not excluded from the computation;

(17) Joint entity means an entity created, whether before, on, or after February 1, 1995, by agreement pursuant to the Interlocal Cooperation Act, but consisting only of two or more cities. Such joint entity shall have all of the powers set forth in the Nebraska Redevelopment Act and the Interlocal Cooperation Act;

(18) Number of new employees means the excess of the number of equivalent employees employed at the redevelopment project during a year over the number of equivalent employees during the base year;

(19) Obligee means any bondholder, agent, or trustee for any bondholder, or lessor demising to any public body property used in connection with a redevelopment project or any assignee or assignees of such lessor's interest or any part thereof;

(20) Person means any individual, firm, partnership, corporation, company, association, joint-stock association, limited liability company, subchapter S corporation, or body politic and includes any trustee, receiver, assignee, or similar representative;

(21) Personal property has the same meaning as in section 77-104;

(22) Project agreement means the project agreement provided for in the Nebraska Redevelopment Act between the company and the applicable contracting public body;

(23) Project application means the project application in section 58-505;

(24) Project area means the area described in the project application. Such area may include the area of operation of more than one taxing body;

(25) Public body means any Nebraska county, city, school district, or contracting public body;

(26) Qualified business means any business engaged in the activities listed in subdivisions (a) through (e) of this subdivision or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the company or used by the purchaser in any of the following activities:

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

(b) The performance of data processing, telecommunication, insurance, or financial services. Financial services, for purposes of this subdivision, only includes financial services provided by any financial institution subject to tax under sections 77-3801 to 77-3807 or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission;

(c) The assembly, fabrication, manufacture, or processing of tangible personal property;

(d) The administrative management of any activities, including headquarter facilities, relating to such activity; or

(e) Any combination of the activities listed in this subdivision;

(27) Qualified property means any tangible property of the type

subject to depreciation, amortization, or other recovery under the Internal Revenue Code or the components of such property that will be located and used at the redevelopment project. Qualified property does not include aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or property that is rented by the company that is party to the project agreement to another person;

(28) Real property has the same meaning as in section 77-103;

(29) Redevelopment period means a period of ten years beginning with the year after which the required increases in employment and investment were met or exceeded and the next nine years;

(30) Redevelopment project means a project described in the Nebraska Redevelopment Act, approved as described in the act;

(31) Redevelopment project valuation means the valuation for assessment of the taxable real property and taxable personal property in the project area of a redevelopment project last certified for the year prior to the effective date of the project agreement;

(32) Taxing body means any Nebraska city, village, municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state having the power to levy ad valorem taxes; and

(33) Year means the taxable year of the company.

The changes made in this section by this legislative bill apply to investments made or employment on or after January 1, 1997, and for all agreements in effect on or after January 1, 1997.

Sec. 2. Section 77-4103, Reissue Revised Statutes of Nebraska, is amended to read:

77-4103. For purposes of the Employment and Investment Growth Act, unless the context otherwise requires:

(1) Any term shall have the same meaning as used in Chapter 77, article 27;

(2) Base year shall mean the year immediately preceding the year during which the application was submitted;

(3) Base-year employee shall mean any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project;

(4) Compensation shall mean the wages and other payments subject to withholding for federal income tax purposes;

(5) Entitlement period shall mean the year during which the required increases in employment and investment were met or exceeded, and the next six years;

(6) Equivalent employees shall mean 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;

(7) Investment shall mean the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation;

(8) Motor vehicle shall mean any motor vehicle, trailer, or semitrailer as defined in section 60-301 and subject to licensing for operation on the highways;

(9) Nebraska employee shall mean an individual who is either a resident or partial-year resident of Nebraska;

(10) Number of new employees shall mean the excess of the number of equivalent employees employed at the project during a year over the number of equivalent employees during the base year;

(11) Qualified business shall mean any business engaged in the activities listed in subdivisions (b)(i) through (v) of this subdivision or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business shall not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not (a) assembled, fabricated, manufactured, or processed by the taxpayer or (b) used by the purchaser in any of the following activities:

(i) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial

purposes;

(ii) The performance of data processing, telecommunication, insurance, or financial services. Financial services for purposes of this subdivision shall only include financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;

(iii) The assembly, fabrication, manufacture, or processing of tangible personal property;

(iv) The administrative management of any activities, including headquarter facilities relating to such activities; or

(v) Any combination of the activities listed in this subdivision;

(12) Qualified property shall mean any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, or the components of such property, that will be located and used at the project. Qualified property shall not include (a) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Employment and Investment Growth Act to another person;

(13) Related persons shall mean any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(B) and (C) or section 707(B) of the Internal Revenue Code of 1986;

(14) Taxpayer shall mean any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under Chapter 77, article 38 sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, 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 are, subject to such taxes, and any other partnership, limited liability company, S corporation, or joint venture when the partners, shareholders, or members are subject to such taxes; and

(15) Year shall mean the taxable year of the taxpayer.

The changes made in this section by this legislative bill apply to investments made or employment on or after January 1, 1997, and for all agreements in effect on or after January 1, 1997.

Sec. 3. Section 77-4901, Reissue Revised Statutes of Nebraska, is amended to read:

77-4901. Sections 77-4901 to 77-4935 and section 6 of this act shall be known and may be cited as the Quality Jobs Act.

Sec. 4. Section 77-4909, Reissue Revised Statutes of Nebraska, is amended to read:

77-4909. Company means any person subject to the sales and use taxes and either the income tax imposed by the Nebraska Revenue Act of 1967 or the franchise tax under sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, 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 are, subject to such taxes, and any other partnership, limited liability company, subchapter S corporation, or joint venture when the partners, owners, shareholders, or members are subject to such taxes.

Sec. 5. Section 77-4924, Reissue Revised Statutes of Nebraska, is amended to read:

77-4924. Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under section 267(b) and (c) of the Internal Revenue Code of 1986, as amended, or section 707(b) of the code.

Sec. 6. The changes made in sections 77-4901, 77-4909, and 77-4924 by this legislative bill apply to investments made or employment on or after January 1, 1997, and for all agreements in effect on or after January 1, 1997.

Sec. 7. Original sections 77-4103, 77-4901, 77-4909, and 77-4924, Reissue Revised Statutes of Nebraska, and section 58-503, Revised Statutes Supplement, 1996, are repealed.