

December 20, 2005

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*Applicants who file applications for subsequent Nebraska Advantage Act projects on or after December 13, 2017 must refer to [Revenue Ruling 29-17-2](#).*

Economic Development Tax Incentives - - Filing for a Subsequent Agreement. AN APPLICATION FOR A SUBSEQUENT AGREEMENT UNDER THE NEBRASKA ADVANTAGE ACT, LB 312, CAN BE FILED WITHOUT A LOSS OF BENEFITS FOLLOWING THE END OF THE ENTITLEMENT PERIOD FOR A PREVIOUS PROJECT WHICH INCLUDED THE SAME ACTIVITIES.

Advice has been requested as to whether a taxpayer with an agreement for a project under either the Employment and Investment Growth Act, LB 775, or the Nebraska Advantage Act, LB 312, can file a Nebraska Advantage Act application for a subsequent project which includes the same activities as the previous project.

Subsequent Application Filed AFTER End of Entitlement Period.

At the end of a current project's entitlement period, a taxpayer may file an application for a subsequent Nebraska Advantage Act 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 Nebraska Advantage Act agreement must be filed after the previous project's entitlement period has ended.

The filing of the application distinguishes between the two projects based on the date of the subsequent application. All investment after the date of the subsequent application will be considered a part of the subsequent project for reaching required levels and receiving benefits. Only property acquired before the date of the subsequent application may continue to receive any applicable property tax benefits based on the previous project. The subsequent project will be considered to be a continuation of the previous project and any credits remaining from the previous project may be used at the subsequent project until they are fully used or until the carryover period of the previous project expires, whichever occurs first.

A taxpayer may obtain refunds of sales or use tax paid on qualified and non-qualified property of the subsequent project, by using any remaining credits. If carryover credits are used to request a refund of sales or use tax on qualified investment in the subsequent project before the required levels are reached, when the taxpayer becomes eligible for direct refunds for the subsequent project, there will be no direct refund on the same property, and credits from the previous project will not be reinstated. However, credits from the previous and subsequent projects will be accounted for and used separately. In the event that the subsequent project falls into recapture, the benefits received through the use of carryover credits are not recaptured and only the benefits earned in the subsequent project would be recaptured.

Subsequent Application Filed BEFORE End of Entitlement Period.

However the treatment is not the same if a taxpayer files an application for a subsequent project prior to the end of the current project's entitlement period for the same activities as the previous project. There will be two separate projects that will be distinguished based on the date of application. All employees working at the project after the date of application, regardless of their date of hire, will be considered employees only at the subsequent project. Any investment in the building and equipment that is within the description of the subsequent project will not be considered as located and used at the previous project as of the date of the subsequent application, regardless of whether the investment was made before or after the date of the subsequent application.

As a result, the taxpayer will become subject to recapture since the employment and investment levels of the previous project were not maintained for the year of the application and all remaining years of the entitlement period for the previous project. Credits from the previous project may not be used to obtain sales or use tax refunds for any purchases after the date of application for the subsequent project. Carryover credits remaining from the previous project would only be available for use against the taxpayer's income tax liability. Any property at the project will not be eligible for any property tax benefits based on the previous project.

APPROVED:



Mary J. Egr Edson  
State Tax Commissioner

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