

Amending a Nebraska Advantage Act Agreement

Issue

May a taxpayer who has a signed Nebraska Advantage Act agreement under one tier request a change to another tier?

Conclusion

A **Tier 2 agreement** may be amended to a Tier 3 or Tier 5 agreement.

A **Tier 2 Web Portal or Data Center (Tier 2WP/DC) agreement** may be amended to a Tier 2, Tier 3, Tier 5, or Tier 5 Web Portal or Data Center (Tier 5WP/DC) agreement. Under a Tier 2WP/DC agreement, the taxpayer will receive the Tier 2 benefits as soon as the taxpayer has met or exceeded the Tier 2 required levels by meeting the required levels at the entire project, prior to meeting the required levels for the data center or Internet web portal. If the taxpayer never requests any property tax benefits by claiming an exemption, the Tier 2WP/DC agreement will be treated as a Tier 2 agreement and an amendment is not necessary.

A **Tier 2 Large Data Center (Tier 2LDC) agreement** may be amended to a Tier 2, Tier 2WP/DC, Tier 3, Tier 5, or Tier 5WP/DC agreement.

A **Tier 4 agreement** may be amended to a Tier 2, Tier 2WP/DC, Tier 3, Tier 5, or Tier 5WP/DC agreement. Under a Tier 4 agreement, the taxpayer will receive the Tier 2 benefits as soon as the taxpayer has met or exceeded the Tier 2 required levels. If the taxpayer never qualifies at the higher levels required for Tier 4 property tax benefits, or if the taxpayer never requests any property tax benefits by claiming an exemption, the Tier 4 agreement will be treated as a Tier 2 agreement and an amendment is not necessary.

A **Tier 5WP/DC agreement** may be amended to a Tier 5 agreement. Under a Tier 5 WP/DC agreement, the taxpayer will receive the Tier 5 benefits as soon as the taxpayer has met or exceeded the Tier 5 required levels by meeting the required levels at the entire project, prior to meeting the required levels for the data center or Internet web portal. If the taxpayer never requests any property tax benefits by claiming an exemption, the Tier 5WP/DC agreement will be treated as a Tier 5 agreement and an amendment is not necessary.

A **Tier 5 Large Data Center (Tier 5LDC) agreement** may be amended to a Tier 5 or Tier 5WP/DC agreement. Under a Tier 5LDC agreement, the taxpayer will receive the Tier 5 benefits as soon as the taxpayer has met or exceeded the Tier 5 required levels by meeting the required levels at the entire project, prior to meeting the required levels for the data center. If the taxpayer never requests any property tax benefits by claiming an exemption, the Tier 5LDC agreement will be treated as a Tier 5 agreement and an amendment is not necessary.

A **Tier 6 agreement** may be amended to a Tier 2, Tier 2WP/DC, Tier 3, Tier 4, Tier 5, or Tier 5WP/DC agreement under special rules detailed below.

Analysis

[Neb. Rev. Stat. § 77-5723\(8\)](#), provides:

The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. An agreement may not be modified to a tier that would grant a higher level of benefits to the taxpayer or to a tier 1 project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the Tax Commissioner and taxpayer may amend the agreement. For a tier 6 project, the taxpayer must agree to limit the project to qualified activities allowable under tier 2 and tier 4.

Taxpayers request an amendment by sending a letter to the Nebraska Department of Revenue.

Under the Nebraska Advantage Act, there are a significant number of differences in benefits, qualification requirements, qualified business activities, applicable time periods, and audit standards between the different tiers. Consequently, a project under one tier may not be an eligible project under a different tier. Therefore, an agreement can only be amended as listed above. An agreement may be amended more than once. For example, a Tier 6 agreement may be amended to a Tier 4 agreement. The Tier 4 agreement may subsequently be amended to a Tier 5WP/DC agreement.

When an agreement is amended, all benefits and time periods will be recomputed for the agreement as though the application was originally filed for the amended tier. Any benefits previously received that are not allowable under the amended agreement must be repaid, with applicable interest, before the amended agreement will be signed by the Tax Commissioner.

As an alternative to amending, any application or agreement may be withdrawn and a new application filed at any time. The request to withdraw must include repayment of any benefits received for the project which is being withdrawn. The new application will be considered as though there had not been a previous application.

Special Rules Applicable to Tier 6 Agreements

When a taxpayer files an application for a Tier 6 project, the ability to amend the agreement depends on whether all activities in the plan are qualified business activities under Tier 2 and Tier 4.

1. If all of the activities in the Tier 6 project are qualified business activities under Tier 2 and Tier 4, the agreement may be amended.
2. If only a portion of the activities in the Tier 6 project are qualified business activities under Tier 2 and Tier 4, but the applicant defines an alternative plan that only includes activities that qualify under Tier 2 and Tier 4, the agreement may be amended using the alternative plan.
3. If only a portion of the activities in the Tier 6 project are qualified business activities under Tier 2 and Tier 4, and the applicant does not define an alternative plan that only includes activities that qualify under Tier 2 and Tier 4, the agreement may not be amended.

APPROVED:



Douglas A. Ewald
Tax Commissioner

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