

December 13, 2017

Subsequent Nebraska Advantage Act Applications

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Applicants who filed applications for subsequent Employment and Investment Growth Act and/or Nebraska Advantage Act projects prior to the date of this revenue ruling are bound by the provisions of Revenue Rulings [29-93-3](#), [29-96-2](#), and [29-05-11](#). Applicants who file applications for subsequent Nebraska Advantage Act projects on or after the date of this revenue ruling are not bound by the prior revenue rulings, except as set forth below.

Issue

Can a taxpayer with an agreement for a project under the Employment and Investment Growth Act (LB 775) or the Nebraska Advantage Act file a Nebraska Advantage application for a subsequent project that includes the same activities as the previous project?

Conclusion

A taxpayer may file an application for a subsequent Nebraska Advantage Act project that includes the same activities as the previous project. The effects and impact of the subsequent application depend on when it is filed.

Analysis

Subsequent Application Filed AFTER End of Previous Project's Entitlement Period

As a previous LB 775 or Nebraska Advantage Act project nears its end, a taxpayer may wish to 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 subsequent Nebraska Advantage Act

agreement must be filed after the previous project's entitlement period relating to direct sales tax refunds has ended.

When a previous project has received personal property tax exemptions, and an application for a subsequent project is filed, the applicant must either:

1. Elect that the property placed in service after the date the subsequent application is filed remains in the previous project, and continue to take the property tax exemption on this property until the exemption period for personal property tax for the previous project expires. The property claimed as exempt for property tax purposes will not count as new investment for the subsequent project; or
2. Elect that the property placed in service after the date the subsequent application is filed is included in the subsequent project, count the property as investment toward qualification for the subsequent project, and forego any property tax exemptions otherwise available for this property in the previous project.

The applicant must make this choice by marking the applicable checkbox on the Nebraska Advantage Act Application when filing a subsequent application.

If the applicant chooses the first option, it may continue to annually file the [Nebraska Advantage Act Claim for Nebraska Personal Property Exemption, Form 312P](#), for the previous project through the end of the exemption period for personal property tax, and may include property placed in service after the date of the subsequent application.

If the applicant chooses the second option, it may continue to file the Form 312P for property placed in service prior to the date of the subsequent application, but it cannot claim as exempt any property placed in service after the application date for the subsequent project that it will claim as new investment for the subsequent project.

The subsequent project is considered to be a continuation of the previous project. Any tax credits remaining from the previous project may be claimed by the taxpayer until they are fully used or until the carryover period of the previous project expires, whichever occurs first.

A taxpayer may use remaining tax credits to obtain refunds of sales or use taxes paid on purchases of qualified and nonqualified property for the subsequent project, to obtain a refund or offset of income tax withholding on employee wages paid after the date of application of the subsequent project, or to get a reimbursement of real estate taxes after the date of the subsequent application. If carryover credits are used to request a refund of sales or use taxes paid on qualified investment in the subsequent project before the required levels are reached, there will be no direct refund for sales tax paid on the same property, and tax credits from the previous project will not be reinstated. Tax 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 from the previous project are not recaptured. Only the benefits earned in the subsequent project would be recaptured.

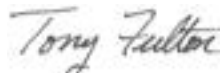
Subsequent Application Filed BEFORE End of Previous Project's Entitlement Period

The treatment is not the same if a taxpayer files an application for a subsequent project prior to the end of the previous project's entitlement period, which includes the same activities as the previous project. The previous project is considered abandoned and the subsequent project will commence on the date of the subsequent application.

All employees working at the project after the date of the subsequent 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 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 the subsequent project, to obtain a refund or offset of income tax withholding on employee wages paid after the date of the subsequent project, or to get a reimbursement of real estate taxes after the date of 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 subsequent project will not be eligible for any property tax benefits related to the previous project.

APPROVED:



Tony Fulton
Tax Commissioner
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