

Revenue Ruling 29-87-7 Economic Development Tax Incentives

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Economic Development Tax Incentives – Leases Between Members of a Unitary Group. A LEASE BETWEEN THE MEMBERS OF A UNITARY GROUP WILL NOT BE CONSIDERED A LEASE FOR DETERMINING INVESTMENT.

Advice has been requested as to the treatment of leases between members of a unitary group for the purposes of the Employment and Investment Growth Act (Act).

Section 77-4103(11), R.S.Supp. 1987, provides in part that:

Qualified property . . . shall not include . . . (b) property that is rented by the taxpayer qualifying under the Employment and Investment Growth Act to another person;

Section 77-4103(12)(a), R.S.Supp. 1987, provides in part that:

Taxpayer shall mean . . . any corporation that is a member of the same unitary group . . .

A unitary group of corporations, as defined in the Nebraska corporate income tax law, has applied for an agreement under the Act. There will be leases between the members of the unitary group. One lease will be for office space in an existing building that is not currently used by any member of the unitary group, and the other will be for the use of computer facilities that will be shared by the members of the unitary group.

The above definition of taxpayer means that for a unitary group of corporations there is only one taxpayer under the Act. All of the corporations are part of the same taxpayer, and are not treated as separate taxpayers. They will be treated under the Act as if they were operated as units of a single corporation.

Since all of the corporations are part of the same taxpayer, the transactions between the members of the unitary group must be disregarded. Only those transactions involving a person who is not a member of the unitary group will be considered to have occurred for the purposes of the Act.

The execution of the lease of an existing building to another member of the unitary group after the date of the application will not allow the existing building to be considered as an investment under the Act. The unitary group owned the building before the date of the application and continues to own it at the present time. There has not been any additional investment by the unitary group within the state. The lease will not count toward meeting the minimal level of investment required under the Act, nor will it produce any credits for the unitary group.

The lease of the computer owned by one member of the unitary group to the other members would normally mean that the computer was not qualified property. Since the other persons renting the computer are members of the same unitary group, they are considered the same taxpayer.

APPROVED:

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