THANK YOU TO OUR SPONSORS:

McGILL BROKERAGE

bright HEALTH

PAUL DAVIS
RECOVER • RECONSTRUCT • RESTORE

SENIOR INSURANCE MARKETING
1(877) 800-3080

BlueCross BlueShield Nebraska

SENIOR MARKET SALES, INC

Art Jetter & Company Insurance Marketing

McGrath | North

NAIFA Nebraska: Key Tax and Incentive Updates

Matthew Ottemann
McGrath North Law Firm

Topic Sections

I've organized our review of key recent tax and incentive updates into the following sections:

- Updates to Nebraska Incentive Packages: Imagine Nebraska Act
- Other Nebraska Tax Incentives
- Nebraska Property Tax Updates
- Federal Tax / Withholding Updates

Updates to Nebraska Incentive Programs: Imagine Nebraska Act

2020 Sunset of Nebraska Advantage Act and the New Imagine Nebraska Act

NEBRASKA

Good Life. Great Opportunity.

1987 - 2005

LB775 – The Employment and Investment Growth Act

2005 – 2020

Nebraska Advantage Act

100,000 New Jobs

$35 Billion Capital Investment

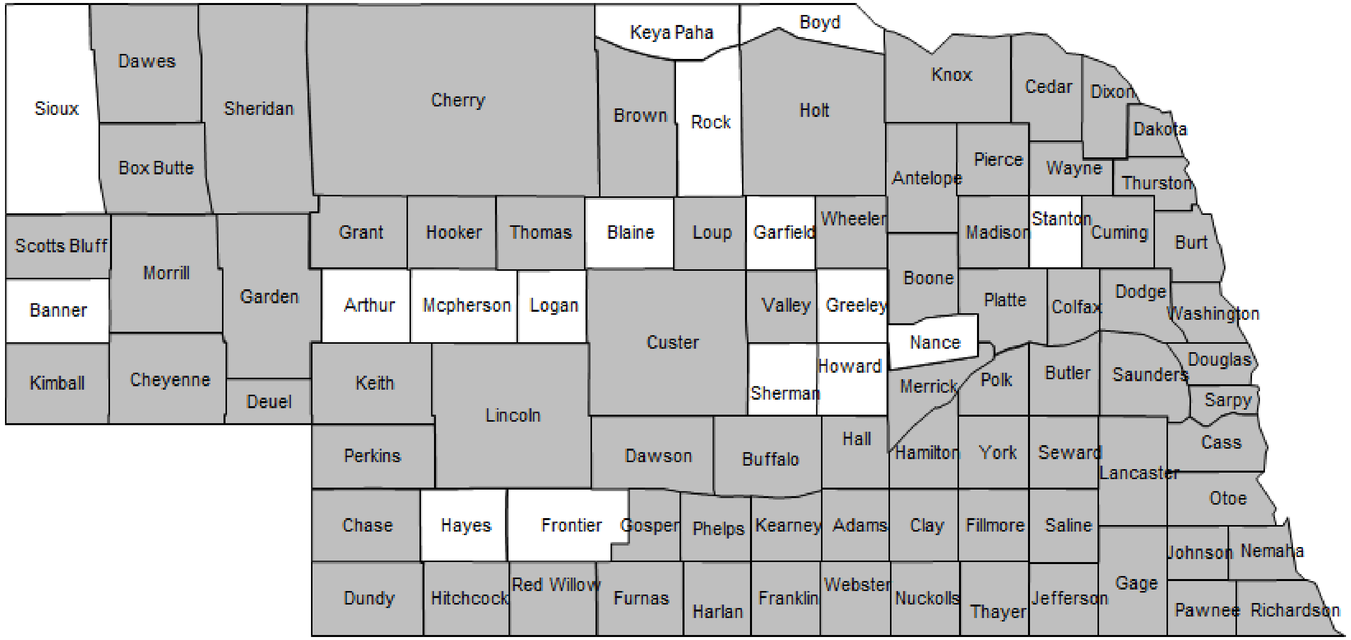
900 Projects

2021 – 2030

Imagine Nebraska Act

Nebraska Incentive Projects …
… Across Nebraska

Project Counties



Nebraska Incentive Projects …
… Across Nebraska

Project Cities

Ainsworzth	Adams	Albion	Alliance	Alda	Alma	Arnold	Archer
Ashland	Atkinson	Auburn	Aurora	Bartlett	Beatrice	Bellevue	Benedict
Benkelman	Bennet	Bennington	Big Springs	Blair	Bloomfield	Bradshaw	Brandon
Broken Bow	Cambridge	Central City	Chadron	Chapman	Chester	Clay Center	Columbus
Cozad	Crete	Dakota City	Davenport	David City	DeWitt	Deshler	Diller
Doniphan	Edgar	Elgin	Elsie	Elk Creek	Elkhorn	Endicott	Fairbury
Fairfield	Fairmont	Falls City	Ft. Calhoun	Fremont	Geneva	Genoa	Gering
Giltner	Glenvil	Goehner	Gordon	Gothenburg	Greenwood	Grand Island	Grainton
Grant	Gretna	Guide Rock	Hampton	Hartington	Harvard	Hastings	Hebron
Hemingford	Henderson	Hershey	Hildreth	Holdrege	Hordville	Humphrey	Humboldt
Imperial	Jackson	Kearney	Lamar	La Vista	Laurel	Lexington	Lincoln
Lindsay	Louisville	Loup City	Lyons	Madison	Madrid	Marquette	Mead
Meadow Grove	McCook	McCool Junction	Minden	Monroe	Mullen	Murdock	Nebraska City
Neligh	Norfolk	North Loup	Odell	North Platte	Ogallala	Omaha	Ord
Osceola	O'Neill	Page	Palmyra	Palmer	Papillion	Pawnee City	Pender
Petersburg	Phillips	Plainview	Plainview	Plattsmouth	Polk	Ralston	Randolph
Ravenna	Richland	Rising City	Roseland	Royal	Schuyler	Scottsbluff	Seward
Shelby	Shelton	Sidney	Snyder	Silver Creek	South Sioux City	Springfield	St. Edward
St. Paul	Stockham	Stella	Sutton	Stromsburg	Sutherland	Syracuse	Taylor
Tecumseh	Thurston	Tilden	Trumbull	Valley	Valentine	Venango	Verdigre
Waco	Wahoo	Wakefield	Wallace	Waterloo	Waverly	Wayne	West Point
Wilcox	Wisner	York					

Why The Imagine Nebraska Act?

- Nebraska Advantage expired after 2020
- Needed new incentive package
- Enhance to stay competitive

Strategy Behind Imagine Nebraska

Addresses What Is Important To Company Decision Makers

- Impactful
  - Sizable enough to make location competitive
- Long Term
  - Consistent with Company’s long term outlook
- Committed
  - Legally enforceable commitment by State

Strategy Behind Imagine Nebraska

<u>Addresses What Is Important To State Policy Decision Makers</u>

- Simplifies Administration
  - Hybrid by NDOR and NDED
  - Simpler application and approval
  - Simpler incentive reporting and use
- Targets Higher Paying Jobs
  - Increases required wage level
  - Requires health insurance and other benefits

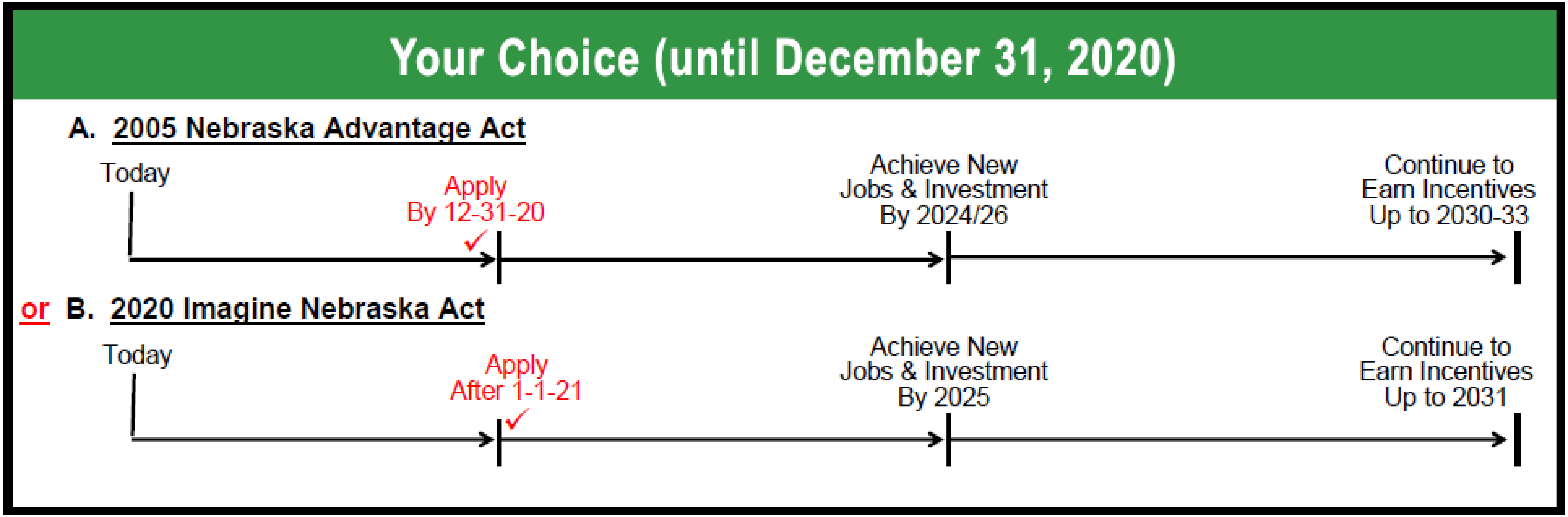
Addresses What Is Important To State Policy Decision Makers

- More Transparent and Fiscally Accountable
  - Enhanced overall and per project reporting
  - Reflects cities need for predictability
- Remains High Performance Based and Competitive
  - Continues to require specific new investment and employment thresholds
  - Incentives are strong enough to impact location decisions

Why Is The Grandfather Opportunity Of Interest?

- Differing Incentive Values
- Different Agency Review
- Differing Ways to Use Incentives
- Differing Employee Requirements
- Discrimination / Residency Issues
- Incentive Caps

Why Now?



Your Choice (until December 31, 2020)
A. 2005 Nebraska Advantage Act
Today
Apply
By 12-31-20
Achieve New
Jobs & Investment
By 2024/26
Continue to
Earn Incentives
Up to 2030-33
or B. 2020 Imagine Nebraska Act
Today
Apply
After 1-1-21
Achieve New
Jobs & Investment
By 2025
Continue to
Earn Incentives
Up to 2031

How Do We Take Advantage Of The Grandfather Opportunity?

Decisions

1. Do we have a project in our future?
2. Which program is better?

Do We Have A Project In Our Future?

<u>What Is A Project?</u>

- Grow an existing site

OR

- Move to a new or larger site

OR

- Add new business from outside Nebraska

Which Program Is Better?

NEBRASKA ADVANTAGE

vs.

Imagine Nebraska Act

2005 Nebraska Advantage Act Incentive Summary (Apply by 12-31-20)

	Tier 1	Tier 2	Tier 2 Data Center	Tier 3	Tier 4	Tier 5	Tier 6
REQUIREMENTS							
New # of Jobs	10 FTE	30 FTE	30 FTE	30 FTE	100 FTE	Maintain	75/50 FTE
New Investment	$1,000,000	$3,000,000	$200,000,000	$0	$12,000,000	$37M or $20M (Renew Energy)	$10M/$109M
Wage Threshold	60% State Average	60% State Average	60% State Average	60% State Average	60% State Average	N/A	200% County/ 150% St. Ave.
TAX INCENTIVE BENEFITS							
Wage Credit	3-6%	3-6%	3-6%	3-6%	3-6%	None	10%
ITC	3%	10%	10%	None	10%	None	15%
Sales Tax Refund	½	Yes	Yes	None	Yes	Yes	Yes
Personal Property Tax Exemption	N/A	Data Center Computers or Internet	All Personal Property	N/A	Aircraft, Computers, Ag Proc. & Dist., Equip.	Data Center Computers or Internet	All Personal Property At Project
Real Property Tax Credit Refund	N/A	N/A	N/A	N/A	N/A	N/A	Yes

OTHER FEATURES

Project Length	Other Requirements	Extremely Blighted	Tax Credit Use
• Attainment Period – Up to 4 or 6 Years Left • Entitlement Period – 6, 7 or 10 Years • Carry Over Period – 2 to 16 Years	No additional employee benefits required to be offered	No special provisions.	To offset withholding liability, sales tax, and corporate income tax.

Qualified Business Categories Vary Depending On Tier. Process: Through NDR.

	Economic Redevelop-ment Area	Small Manufacturers		Growth and Expansion	Quality Jobs	Quality Jobs Investment	Mega-Project	Modernization
REQUIREMENTS								
		Rural	Urban					
New # of Jobs	5 FTE	5 FTE	10 FTE	10 FTE	20 FTE	30 FTE	250 FTE	None
New Investment	$250,000	$1,000,000	$1,000,000	$1,000,000	None	$5,000,000	$250,000,000	$50,000,000
Wage Threshold	70% State Average	70% State Average	75% State Average	90% State Average	100% State Average		150% of State Average	
TAX INCENTIVE BENEFITS								
Wage Credit	6%	6%	4%	4%	100% = 5% 150% = 7% 200% = 9%		150% = 7% 200% = 9%	None
Invest Tax Credit	4%	4% (1)	4% (1)	4%	None	7%	7%	None
Sales Tax Refund/ Exemption	None	None	None	None	None	Yes	Yes	Yes
Personal Property Tax Exemption						Ag Processing Machinery & Data Center Equipment	All Tangible Personal Property	Ag Processing Machinery & Data Center Equipment

OTHER FEATURES

Project Length	Other Requirements	Extremely Blighted	Tax Credit Use
• Ramp Up Period–Up to 5 Years • Performance Period–7 Years • Carry Over Period– 3 Years	Must offer health insurance and show benefits for job to count. **Anti-Discrimination** Broad/Vague Anti-Discrimination Provision = Project Legal Risk of losing all incentives	Wage Credit and ITC are 1% point higher for Extremely Blighted Areas.	To offset withholding liability, sales tax, and corporate income tax. Also for job training and recruitment of new, high wage employees. Also to repay loans from the Imagine Nebraska Revolving Loan Fund for workforce training and infrastructure development.

Program Cap: $25M/year for 2021-22; 100M/year for 2023-24; 150M/year for 2025.
3% of State tax receipts thereafter. Then no new Apps.
While only full-time employees count, FTE calculation is still applicable.

Process Change: File with Nebraska Department of Economic Development.
Audit & Claims still NDR.
Footnote: (1) 7% if $10 M investment for manufacturers.

Qualified Business Differences

Nebraska Advantage Act

- Production of Electricity Using Renewable Energy Sources
- RD&T (Scientific, Ag, Animal Husbandry, Food Product, Industrial)
- Scientific Testing
- Data Processing
- Telecommunications
- Insurance Services
- Financial Services
- Manufacturing
- Distribution
- Storage/Warehousing
- Transportation
- Headquarters (Administrative)
- Targeted Export Services (75% of sales outside Nebraska or to the U.S. Government including Cloud Computing)
  - Software Development
  - Computer Systems Design
  - Product Testing Services
  - Guidance or Surveillance Systems
  - Technology Licensing
- Data Center
- Internet Web Portal
- Retail Sales of Tangible Personal Property (TPP) if 20% is at wholesale, manufactured, or to someone else in qualified business
- Retail sales of TPP if 75% or more of sales are outside of Nebraska

(Some Variations Depending on Tier)

Imagine Nebraska Act

NAICS Codes

- Manufacturing – 31, 32 or 33, including pre-production services
- Testing Labs – 541380
- Rail Transportation – 482
- Truck Transportation – 484
- Insurance Carriers – 5241
- Wired Telecom Carriers – 517311 and 517312
- Wired Telecom – 517312
- Telemarketing – 561422
- Data Processing, Hosting and Related Services – 518210
- Computer Facility Mgmt – 541513
- Warehousing – 4931
- Logistics Facilities – Portions of 488210,488310, 488490
- Computer Systems Design - 5415

Other

- Admin Mgmt (e.g. HQ)
- RD&T (Scientific, Ag, Animal Husbandry, Food Product, Industrial or Tech)
- Electricity Production using Renewables
- Performance of Financial Services
- 75% Export Sales (but not if majority of employees = Ag (11), Transportation (48-49), Information (51), Utilities (22), Mining (21), Public Admin (92), or Construction (23)).
- Aircraft Services for nonresidents

(No Tier Variations)

Imagine Nebraska Compared to Nebraska Advantage

Project: Small Manufacturing

New Jobs: 10
New Investment $1,000,000

Tax Incentive Benefits

Neb. Advantage	$210,000
✓ Imagine Neb.	$260,000

Project: Systems Design

New Jobs: 30
New Investment $0

Tax Incentive Benefits

✓ Neb. Advantage	$820,000
Imagine Neb.	$690,000

Project: Retail Exporting

New Jobs: 45
New Investment $5,000,000

Tax Incentive Benefits

✓ Neb. Advantage	$1,570,000
Imagine Neb.	$1,430,000

Project: Technology Licensing

New Jobs: 50
New Investment $8,000,000

Tax Incentive Benefits

Neb. Advantage	$3,120,000
✓ Imagine Neb.	$3,220,000

Imagine Nebraska Compared to Nebraska Advantage

Project: Data Center

New Jobs: 50
New Investment $600,000,000

Tax Incentive Benefits

✓	Neb. Advantage	$90,000,000
✓	Imagine Neb.	$90,000,000

Project: Large Headquarters

New Jobs: 75 High Wage
New Investment $140,000,000

Tax Incentive Benefits

✓	Neb. Advantage	$43,410,000
	Imagine Neb.	$28,010,000

Project: Research & Develop

New Jobs: 90
New Investment $10,000,000

Tax Incentive Benefits

	Neb. Advantage	$4,630,000
✓	Imagine Neb.	$4,890,000

Project: Data Processing

New Jobs: 90
New Investment $125,000,000

Tax Incentive Benefits

✓	Neb. Advantage	$22,020,000
	Imagine Neb.	$19,130,000

Imagine Nebraska Compared to Nebraska Advantage

Project: Software Development

New Jobs: 110
New Investment $18,000,000

Tax Incentive Benefits

✓ Neb. Advantage	$7,220,000
Imagine Neb.	$6,570,000

Project: Distribution Center

New Jobs: 130
New Investment $30,000,000

Tax Incentive Benefits

✓ Neb. Advantage	$8,420,000
Imagine Neb.	$6,120,000

Project: Headquarters

New Jobs: 150
New Investment $35,000,000

Tax Incentive Benefits

✓ Neb. Advantage	$10,710,000
Imagine Neb.	$10,350,000

Project: Insurance Co.

New Jobs: 200
New Investment $50,000,000

Tax Incentive Benefits

✓ Neb. Advantage	$12,990,000
Imagine Neb.	$ 9,940,000

Anti-Discrimination Provisions

- Adopted by Senator Amendment
- Refusal to Fix
- Potential 2021 Technical Correction

Incentive Agreement

"A requirement that the taxpayer **not violate any state or federal law against discrimination**"

Problems With This

- Extensive audit by NDR
- Loss of all incentives for 1 violation by company anywhere in country

Differences In Program Administration

Incentive Level Flexibility

- Nebraska Advantage
  - Apply at Specific Tier
  - Some movement down
- Imagine Nebraska
  - Movement between Levels

Differences In Program Administration

Employee Definition

- Nebraska Advantage
- Imagine Nebraska
  - – Only Full-Time
  - – Nebraska Residents Only

Cap Under Imagine Nebraska Act

Cap

- 2021 & 2022: $25 million
- 2023 & 2024: $100 million
- 2025: $150 million
- Then: 3% of Nebraska net receipts

How To Deploy The Grandfather

File Protective Application

- Decide by November 30
  - So Advantage Application may be filed by December 31

Questions Regarding Protective Application

- Do I need to have all the project details when I file?

No

- Can I amend my project after I file?

Yes

- Is there a penalty to later withdraw?

No

What is Needed to Apply?

- Project & Entity Details
- Application is part of your Agreement with Nebraska
  - Legal Document
- Project Description is Critical
- All Current Project Locations Must Be Listed
- All Participating Entities Must Be Listed

Other Nebraska Tax Incentives

Imagine Nebraska Revolving Loan Fund

NEBRASKA
Good Life. Great Opportunity.

- Revolving Loan Fund
- Applicants under Imagine Nebraska Act
- Used for Workforce Training & Infrastructure Development
- May be repaid with credits from Imagine Nebraska Act

Key Employer & Jobs Retention Act

- Creates incentive to keep key employers
- After undergoing change in control or ownership
- At risk of leaving Nebraska
- Applications must be filed by May 31, 2021

Key Employer & Jobs Retention Act

What Is A Key Employer?

- Employs at least 1,000 FTE employees in Nebraska
- Health insurance to full-time employees
- Provides additional package of benefits
- Enforces company policy against any discrimination
- Uses E-Verify

Key Employer & Jobs Retention Act

NEBRASKA
Good Life. Great Opportunity.

What Is A Key Employer?

- Change in control or ownership within last 24 months
- At risk of leaving Nebraska, as determined by DED Director
- Retains at least 90% of Nebraska employees
- Qualified business (per Imagine Nebraska Act)

Key Employer & Jobs Retention Act

Wage Retention Credit

- 5% of wages paid to retained employees
  - At least 100% of Nebraska statewide average wage
  - For year of application + next nine years
- Total $4 million for State
  - Earlier approval fully funded first
- Used against income tax & withholding liabilities
  - Limited carryover

Key Employer & Jobs Retention Act

Recapture

- No credits for years in which employment dropped below 90% of existing level
- Lose 1/10 of existing credits for each year below 90% of existing level

Customized Job Training Act

- Provides grants to employers for reimbursement of job training expenses
- Used for training that will:
  - Create net new jobs
  - Result in net increase in employee wages
- Wages for new jobs must pay at least state average wage

Customized Job Training Act

- Training may be provided by:
  - Community college
  - Secondary school
  - Nebraska ESU
  - Other qualified provider, if receive a certificate, license, endorsements or recognized skill standards of industry

Nebraska Property Tax Updates

Nebraska Property Tax Incentive Act

- Refundable credit used against Nebraska income tax
  - For 2020: Total Credits = $125 M
  - For 2021-3: Total Credits = $125 M + Increase based on Nebraska’s tax receipts
  - For 2024: Total Credits = $375 M
  - For 2025: Total Credits = $375 M + Growth percentage in total assessed real property (maximum 5%)

Nebraska Property Tax
$10,000 Exemption

- Nebraska's $10,000 Personal Property Tax Exemption was eliminated
- May result in many smaller businesses now owing Nebraska property tax

Federal Tax / Withholding Updates

Memorandum on Deferring Payroll Tax Obligations

Deferral of Employee's Social Security Tax

- Treasury Secretary has discretion to defer (not eliminate) employee obligation for withholding and payment of FICA tax
- President Trump directed Treas. Sec. to use this authority for September – December 2020

Memorandum on Deferring Payroll Tax Obligations

Deferral of Employee’s Social Security Tax

- For employees whose wages is less than $4,000 per bi-weekly pay period
  - $104,000 annually
  - If over this amount, employee’s tax must be withheld and paid by employer
- Does not apply to employee share of Medicare tax (1.45%)
- No penalties, interest or additions to tax would apply to these payments

Memorandum on Deferring Payroll Tax Obligations

Deferral of Employee's Social Security Tax

- Per statement from Treasury Secretary, this is a voluntary program
- Because a deferral, tax would have to start to be repaid in January
- If employees leave:
  – Issue a promissory note
  – Maintain credit card on file

Memorandum on Deferring Payroll Tax Obligations

Deferral of Employee's Social Security Tax

- Memorandum also asks Treas. Sec. to explore avenues to eliminate obligation to pay these taxes back
- Could be attempt to force Congress to forgive taxes by later legislation

QUESTIONS

Matt Ottemann, JD, LLM
State & Local Tax & Incentives Attorney
McGrath North Law Firm
Omaha, Nebraska

www.NebraskaStateTax.com
www.McGrathNorth.com
MOttemann@McGrathNorth.com
402-633-9571

Thank You!

NAIFA Nebraska

Key Tax and Incentive Updates

Presentation Notice

This presentation should not be considered as legal, business or financial advice. This presentation is designed to provide information about the subject matter covered. It is provided with the understanding that while the speaker/author is a practicing business owner advisor, neither he nor his firm has been engaged by the attendee/reader to render legal or other professional services (unless a specific engagement agreement has been executed). If legal, business or financial advice or other expert assistance is required by the attendee/reader, the services of a competent professional should be sought.

UPCOMING CE WEBINARS

All times CST – each program 1 hour CE

All FREE for NAIFA members

- October 23 – 1-2PM – Election Preview and Impact – Dr. Randy Adkins, UNO Political Science
- October 29 – 2-3PM – "The Great Income Gap" (Long-Term Care Expenses) – Greg Mantz, Regional Sales Director at OneAmerica Financial
- November 5 – 1-2PM – Economic Forecast and Election Impact – Ernie Goss, Creighton University
- November 12 – 1-2PM – How to Help Your Clients Avoid the Top 6 Mistakes When Exiting Their Business – Scott Bushkie, Cornerstone Business Services
- November 18 – 2-3PM - Three Ways to Protect Your Business Owner Clients' Biggest Asset – multiple speakers

Nick Niemann, JD
State & Local Tax
& Incentives Attorney
Partner, McGrath North
402-633-1489
nniemann@mcgrathnorth.com

Matt Ottemann, JD, LLM
State & Local Tax
& Incentives Attorney
Partner, McGrath North
402-633-9571
mottemann@mcgrathnorth.com