

December 20, 2005

Economic Development Tax Incentives -- Sales or Use Tax Paid Is Not Part of Investment . THE AMOUNT OF SALES OR USE TAX PAID ON THE QUALIFIED INVESTMENT THAT IS ELIGIBLE FOR REFUND SHALL NOT BE CONSIDERED A PART OF THE AMOUNT OF THE INVESTMENT EVEN WHEN THE REFUND HAS NOT YET BEEN RECEIVED.

Advice has been requested as to whether or not the amount paid for sales or use tax is included in the value of qualified property when investment has to be computed before the refund of the sales and use tax has been received under the Nebraska Advantage Act.

Section 77-5725(2), R.S.Supp. 2005, provides in part that:

When the taxpayer has met the required levels of employment and investment contained in the agreement, . . .

(a) A refund of all sales and use taxes for a tier 2, tier 4, or tier 5 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under . . . the Nebraska Revenue Act of 1967 . . . for all purchases, including rentals, of:

(i) Qualified property used as a part of the project; . . .

Section 77-5710, R.S.Supp. 2005, provides in part that:

Investment shall mean the value of qualified property incorporated into or used at the project.

Since all of the property that qualifies as investment also qualifies for a refund of all or onehalf of sales or use tax paid on such property, the value of the qualified property will not include the amount of sales or use tax subject to refund, even when the sales or use tax refund has not been requested or received. The amount of sales and use tax will not be included in the original cost of property owned by the taxpayer or in the net annual rental of property rented or leased by the taxpayer. Sales or use taxes that have been properly paid to another state, and that cannot be refunded to the taxpayer, will be included in the amount of the investment.

APPROVED:



Mary Jane Egr
State Tax Commissioner

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