

MEMORANDUM

Imagine Nebraska Act Guidance

This Policy remains effective until it is amended, superseded, or rescinded.

SUBJECT: Personal Property Tax Exemption Election

This guidance document is advisory in nature but is binding on the Department of Economic Development (DED) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DED and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

ISSUE:

- I. Treatment of qualified property placed into service at a qualified location after an Imagine Nebraska Application is filed but before the expiration of an applicable personal property tax exemption period from a prior Nebraska Advantage agreement.

ANALYSIS:

- I. The Nebraska Advantage Act (NAA) in Nebraska Revised Statutes § 77-5725(8) creates a separate class of property for certain property used in connection with NAA projects and placed in service by the taxpayer after the date of the completed NAA application. Under the statute, this property typically was eligible for exemption from personal property tax from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year the property qualifies for the exemption. Tier 2 large data center projects or tier 5 projects properly sequential to tier 2 large data center received an extended exemption.
- II. In Revenue Ruling 29-17-2 the Nebraska Department of Revenue (DOR) was asked, in part, to determine if a taxpayer with an agreement under NAA could file a subsequent application for a project that included the same activities as the previous project. As part of this ruling, DOR concluded that if a subsequent application was filed after the end of the previous project's entitlement period relating to direct sales tax refunds, the taxpayer would be able to retain and use all benefits earned under the previous project.

According to the Revenue Ruling, when a taxpayer filed such subsequent application, the taxpayer had to make an election for property placed in service after the date the subsequent application was filed. The taxpayer had to decide whether the property placed in service after the date the subsequent application was filed would remain in the previous project and continue to be exempted from property tax. If the taxpayer made the election, the property would not count as new investment for the subsequent project. In the alternative, the taxpayer could elect to have the property count as new investment in the subsequent project and forego any property tax exemption otherwise available from the previous project on that property.

- III. Like NAA, the Imagine Nebraska Act (ImagineNE), in Neb. Rev. Stat. 77-6831(8), creates a separate class of property for certain property used at the qualified location(s) and placed in service by the taxpayer after

the application date. This class of property is eligible for a personal property tax exemption from the first January 1 following the end of the year the taxpayer attains the required levels of investment, employment, wage rates, and/or benefit provision as indicated in 77-6831(8)(b)(i) - (iii) through the ninth December 31 after the first year the property qualifies for the exemption. Also like NAA, ImagiNE provides specific treatment for taxpayers who file certain applications under NAICS code 518210 for Data Processing, Hosting, and Related Services. The separate class of property in these statutorily defined situations would also be eligible for exemption from the first January 1 following the placement in service of such property through the ninth December 31 after the year the first claim for exemption is approved.

- IV. Neb. Rev. Stat § 77-6828(4) anticipates both the coexistence of agreements between incentives programs and the use of property tax exemptions from prior agreements. The statute indicates that, “[n]ew investment or employment at a project location that results in the meeting or maintenance of the employment or investment requirements, the creation of credits, or refunds of taxes under the Nebraska Advantage Act shall not be considered new investment or employment for purposes of the ImagiNE Nebraska Act. The statute goes on to further indicate that the “use of property tax exemptions at the project under the . . . Nebraska Advantage Act does not preclude investment not eligible for such property tax exemptions from being considered new investment under the ImagiNE Nebraska Act.”

CONCLUSION:

DED has been asked whether a taxpayer who files an application for an ImagiNE agreement subsequent to either an NAA agreement or another ImagiNE agreement will be allowed to make a property tax exemption election similar to the election allowed for those with NAA agreements pursuant to Revenue Ruling 29-17-2.

The ImagiNE statutes contemplate and address the possibility of the taxpayer utilizing the property tax exemption from an NAA after applying for an ImagiNE agreement. Pursuant to statute, the “use” of the property tax exemption by the taxpayer is that which is determinative, therefore a taxpayer must elect whether or not to use the exemption for property placed in service at the location.

To effectuate their election to use a personal property tax exemption available from a prior agreement, a taxpayer must file a Form 1107E after the filing of its subsequent ImagiNE application and prior to filing its Form 312P (NAA) or Form 1107P (ImagiNE) for the year. The Form 1107E is available at imagine.nebraska.gov, the ImagiNE Nebraska program website.

END OF GUIDANCE MEMORANDUM