

MEMORANDUM

ImagiNE Nebraska Act Guidance

This Policy remains effective until it is amended, superseded, or rescinded.

SUBJECT: Date of Investment

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. What date will qualified property be considered investment for the purpose of the ImagiNE Nebraska Act?

ANALYSIS:

- I. Nebraska Revised Statute §77-6811 provides in part that:

Investment means the value of qualified property incorporated into or used at the qualified location or locations.

- II. Nebraska Revised Statute §77-6819 provides in part that:

Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property, that will be located and used at the project.

Qualified property must be of a type subject to depreciation, amortization, or other recovery under the IRC.

Section 167(a) of the Internal Revenue Code (IRC) provides that a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in the trade or business or of property held by the taxpayer for the production of income shall be allowed as a depreciation deduction. See, 26 U.S.C §167(a).

The period for depreciation of an asset shall begin when the asset is placed in service and shall end when the asset is retired from service. See, 26 U.S.C §167(a)-10.

Property is placed in service when it is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity. See generally, 26 C.F.R §1.167(a)-11(e)(1)(i).

CONCLUSION:

- I. Tangible personal property must be “used at the qualified location(s)” before it will be considered an investment. For tangible personal property owned by the taxpayer, “used at the qualified location(s)” has the same meaning as “placed in service” in section 167 of the Internal Revenue Code for depreciation purposes. This includes qualified property moved from a location outside of Nebraska to a qualified location in Nebraska for the first time after the date of application. It is the intent of the ImagiNE Act to encourage new businesses to relocate to Nebraska, and the Act does not limit investment to new purchases. See Neb. Rev. Stat. §77-6802.
- II. For improvements to real estate, the date of the investment will be the date the qualified property is incorporated into the real estate. The investment in an improvement will have occurred even though the entire improvement is not finished, and may not be ready for use. The amount of the investment will be determined by the amounts capitalized as original cost when the improvement to real property is actually placed in service.
- III. For real property purchased by the taxpayer, the property will be considered investment when control of the property is transferred to the taxpayer.
- IV. For property leased by the taxpayer, the property will be investment when control of the property is transferred to the taxpayer, whether or not lease payments are due for the period during which control is transferred.

END OF GUIDANCE MEMORANDUM