



APPLICATION GUIDE

**ECONOMIC
DEVELOPMENT
INCENTIVES**

imagine.nebraska.gov

Notice:

This guidance document is advisory in nature but is binding on the Department of Economic Development (DED)/Nebraska Department of Revenue (DOR) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DOR/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.

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How to Apply:

Step One: Obtain Tax ID Numbers

If your business is organized as a corporation or a partnership, you will need a Nebraska Corporation Income Tax or Partnership State Identification Number before you can begin an online application for the ImagiNE Nebraska Act (Act). If you do not have the required state ID number, you will first need to obtain one from the Nebraska Department of Revenue (DOR). You may apply for a state ID number online or by filing a Nebraska Tax Application, Form 20.

Step Two: Complete ImagiNE Nebraska Application

File the ImagiNE Nebraska Act application with the Nebraska Department of Economic Development (DED). To establish an application date, you must provide complete answers to all required online application questions and submit the \$5,000 application fee. Once the application is complete and the application fee is received, you will receive an email confirming the application date. The application date is important because it establishes the base year for employment and determines the wage rate. The application date also determines what will be considered new investment and employment. Contingent upon your application being approved, qualified investments made after the application date will count towards your investment requirement and FTEs added after the base year will count as new employees.

If the application is incomplete, DED will issue a request for the missing information. Failing to respond to an initial request for additional information within the time requested may result in the application being dropped. If the applicant wishes to participate in the program at a later time, a new application and application fee will need to be submitted.

Step Three: Submit Supplemental Information to Complete Approval Process

Once you have submitted the application you will receive a request for supplemental information required to complete the approval process. DED will not make a decision about your application until complete supplemental information is submitted. Supplemental information includes:

- Base-year employment information.
- Tax incentive use estimates (projections).
- Additional taxpayer entity information, if applicable.

The person listed as contact for the online application will receive an email with instructions on how to complete and securely upload supplemental information forms. The requested supplemental information must be submitted on the forms provided. [link to forms] The email will also provide instructions on how to apply for a direct payment permit. ImagiNE requires that the taxpayer be issued a direct payment permit unless the taxpayer has opted out of the requirement.

Once you receive the supplemental information request email, the 90-day approval period will be tolled until complete responses are received.

Approval or Denial:

The DED Director will make the determination to approve or not approve an application as expeditiously as possible within the 90-day statutory period. The 90-day period does not include any days during which DED waits for a response from the applicant.

- Approval: If an application is approved, you will receive an ImagiNE Nebraska Act Agreement in the mail for the applicant's signature within 90 days after approval.
- Denial: If an application is denied, the applicant will receive a written notice of denial.

Optional Review and Certification:

All applicants have the option to request review and certification of qualified locations and/or base year employment. Certification is binding on the Department of Revenue (DOR) to the extent the information provided by the applicant accurately described the activities at the location and the base year employment that was present. If review and certification is not requested the issue remains subject to later audit.

Qualified Locations

Upon request, DED will review and certify that the location or locations designated in the application are qualified locations under the Act. This determination is based on the types of business activities engaged in by a majority of employees at the location. Qualified location also includes any other business location if at least seventy-five percent of the revenue derived at the location is from sales to customers which are delivered or provided from the qualified location to a location that is not within Nebraska. The applicant will be required to describe in detail the activities taking place at the location or locations. The review will be completed within 90 days plus tolling. For more information on the review and certification of qualified locations, contact DED. [link to forms]

Base Year Employment

Upon request, DOR will review and certify that the base-year employment numbers are as reported by the taxpayer. The certification is binding to the extent the base-year information is not affected by transfers of employees from another location in Nebraska, the acquisition of a business, or moving businesses or entities to the qualified location or locations. The review will be completed within 180 days plus tolling. For more information about the base year employment certification process contact DOR.

Additional Information:

Application Date

The application date is important because it establishes the base year for employment and determines the wage rate. The application date also determines what will be considered new investment and employment. Contingent upon your application being approved, qualified investments made after the application date will count towards your investment requirement and FTEs added after the base year will count as new employees.

The application date is the date DED receives a complete application. The application will be considered complete when the applicant has submitted full responses to all of the items marked as required in the online application and the \$5,000 application fee has been received. If the online application is incomplete when received, DED will notify the applicant of the items needed. In that case, the application date will be the date that DED receives the last required item. The applicant will receive an email confirming the application date.

The following may affect your application date:

- **Method of Delivery:**

The method of delivery will determine the date of the last item needed for a complete application. If the item is delivered electronically, the application date will be the date the item is received electronically. If the item is mailed, the date the last item required to complete the application is received by DED is the application date.

- **Application Fee:**

If the application fee is submitted as an Electronic Funds Withdrawal, the date the fee is received for purposes of determining the application date will be the date submitted.

If the application fee is submitted as ACH Credit, the date the fee is received for purposes of determining the application date will be the date the ACH payment is received by DOR.

If the application fee is submitted as a paper check, the date the fee is received for purposes of determining the application date will be the date the paper check is received by DED.

- **Selection of a Later Date:**

When you fill out the online application you will have the option to choose an application date up to 30 days after the date you submit the application. If you choose this option your application date will be the date you select or the date you submit the last item needed to complete the application, whichever is later.

Options for Defining an Application

1. The Act allows an applicant to define the agreement to include a single qualified location, all qualified locations within a county, all qualified locations in more than one county, or all qualified locations within the state. If the applicant opens a new location that meets the definition of qualified location within the defined area after the agreement is signed, that location will become a part of the agreement.
2. A taxpayer with an existing agreement may apply for and receive a new agreement for any qualified location or locations that are not part of an existing agreement under the ImagiNE Nebraska Act, but cannot apply for a new agreement for a qualified location designated in an existing agreement until after the end of the performance period for the existing agreement.
3. The taxpayer may select a different level of employment and investment until the first December 31 following the end of the ramp-up period on a form approved by the director.

Electronic Verification of Employees' Work Eligibility

The ImagiNE Nebraska Act requires taxpayers to utilize E-Verify, the federal electronic verification program, to ensure that new employees are legally able to work in the United States.

E-Verify is a free and simple to use web-based system that electronically verifies the employment eligibility of newly hired employees. E-Verify allows participating employers to electronically compare employee information taken from the Form I-9, Employment Eligibility Verification, against Social

Security Administration, Department of Homeland Security, and Department of State databases. For additional information, go to e-verify.gov.

If you are audited under this program you will be required to provide proof of timely confirmation of employment eligibility. Examples of documents for the taxpayer to retain include, but are not limited to, the following:

- Case Verification Number;
- Copies of the Case Details page which includes the Case Verification Number; and
- The User Audit Report which provides general data on cases.

Benefits will not be granted for newly hired employees unless the applicant can prove that it has timely electronically verified the work eligibility status of all newly hired employees employed in Nebraska within 90 days of hire. In addition, all hours worked by, and compensation paid to, any employee who is not timely confirmed as eligible to work in Nebraska will be excluded from the calculation of any tax incentive.

Signature:

The application needs to be signed by an authorized person (Owner, Partner, Corporate Officer, or a person authorized by a completed Power of Attorney).

Record Retention Guide: All Applicants should retain documents to verify that they have met the minimum required levels. Refer to the [Records Retention Guide](#) on DOR's website.

Terms and Definitions:

Note: Refer to the ImagiNE Nebraska Act statutes for statutory definitions of terms. The definitions stated in these instructions do not supersede, alter, or otherwise change any provisions of the Nebraska tax code, regulations, or court decisions.

Applicant. An applicant is one or more persons listed in the application, or in an amendment to the application, who perform the qualified business activities at the project, and is part of the taxpayer.

Base Year. Base year means the year immediately preceding the year of application, subject to the following exceptions:

If the year of application is 2021, the base year is either 2019 or 2020, whichever year the applicant had the larger number of equivalent employees at the qualified location or locations; and

If the year of application is 2021 or 2022, and the applicant increased the number of equivalent employees at the qualified location or locations in either 2020 or 2021 in response to the COVID-19 pandemic, the base year is 2019.

Base Year Employee. Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the qualified location or locations.

Benefit Corporation. A benefit corporation means a business corporation which has elected to become subject to the Nebraska Benefit Corporation Act and has not had this status terminated. For purposes of the ImagiNE Nebraska Act, a benefit corporation needs to have been a benefit corporation for at least one year prior to application and must retain this status for the duration of the taxpayer's agreement under the ImagiNE Act.

Benefits, Sufficient. Benefits means nonwage remuneration offered to an employee, including medical and dental insurance plans, pension, retirement, and profit-sharing plans, childcare services, life insurance coverage, vision insurance coverage, disability insurance coverage, and any other nonwage remuneration as determined by the director. A sufficient package of benefits includes a package of benefits customarily offered by Nebraska employers to full-time employees.

Carryover Period. The carryover period means the period of three years immediately following the end of the performance period.

Credit Refund. A credit refund is a refund to the applicant of Nebraska and local sales and use taxes paid on purchases at a qualified location which are not eligible for direct refund and are made after the year the minimum levels of investment and employment were met, through the end of the carryover period. The credits used must have been earned in a prior year.

Cumulative Investment. The cumulative investment is all investment made on or after the date of application and prior to the end of the current year, less retirements of the value of owned property previously claimed and the value of leases no longer in effect. Cumulative investment determines whether the required investment level has been attained or maintained.
DED. Nebraska Department of Economic Development.

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Direct Pay Permit. A direct pay permit authorizes a taxpayer to pay the proper Nebraska and local use tax on certain purchases directly to the Nebraska Department of Revenue in lieu of paying the sales tax to the seller.

Direct Refund of Sales and Use Taxes. A direct refund is a refund to the applicant of Nebraska and local sales and use taxes on the purchase or lease of qualified property for use at a qualified location, or on the purchase or lease of an aircraft for use in connection with a qualified location, which is placed in service during the ramp-up or performance periods. An unrelated owner of a building leased to the applicant can file for a direct refund of sales tax paid on property annexed or incorporated into real estate. The Nebraska and local sales and use taxes paid on qualified property or an aircraft placed in service during the ramp-up period is eligible for refund after the completion of the year in which the minimum required levels of investment and employment are met. These taxes paid on qualified property placed in service in a year during the performance period may be refunded if the minimum required levels of investment and employment were maintained for the year.

DOR. Nebraska Department of Revenue.

Equivalent Employee. Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of 40 times the number of weeks in a year. This number is often referred to as the number of Full-Time Equivalent Employees or "FTEs."

Full-Time Employee. A full-time employee is defined as described in section 4980 of the Internal Revenue Code of 1986, as amended, and the regulations for this section.

Headquarters. The headquarters is where the executive management for the entity is located.

Investment. Investment is the value of qualified property incorporated into or used at a qualified location. For qualified property owned by the taxpayer or leased from a related person, the value is the amount capitalized and depreciated for federal tax purposes. For qualified property leased by the taxpayer from an unrelated person, the average net annual rent is multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. This includes land that is rented in connection with, and incidental to, a building that is leased.

Nebraska Statewide Average Weekly Wage. The Nebraska statewide average weekly wage for any calendar year means the most recent average weekly wage paid by all employers in all counties in Nebraska as reported by the Department of Labor on October 1 of the calendar year prior to application. [Link to wage table](#)

Number of New Employees. The number of new employees is equal to the lesser of the Method 1 or Method 2 calculations. Employees hired after the date of application that are not confirmed within 90 days as authorized to work in Nebraska are not included in the Method 1 or Method 2 calculations. Employee must be a resident to be included in the calculation of the number of new employees.

For employees who work both at a qualified location and also perform services for the taxpayer at the employee's Nebraska residence, the time for which an employee is compensated for services performed at the employee's Nebraska residence will be considered spent at the qualified location.

- **Method 1.** Subtract the number of equivalent base-year employees from the number of equivalent employees employed at a qualified location or locations during the current year.
- **Method 2.**
 - Sum the results of these two calculations.
 - Calculate the number of equivalent employees employed full time at the project who a) were not full-time base-year employees, b) meet the health coverage requirement, c) are paid wages at a rate of at least the required percentage of the Nebraska average hourly wage for the calendar year of application and d) receive a sufficient benefit package.
 - Calculate the number of equivalent employees who a) were employed part-time at the qualified location during the base year and became employed full-time at the qualified location after the base year, b) meet the health coverage requirement, c) are paid compensation at a rate of at least the required percentage of the Nebraska hourly wage for the calendar year of application and d) Receive a sufficient benefit package. Subtract the hours worked by these employees in the base year.

Performance Period. Performance period means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the sixth year after the year the required increases were met or exceeded.

Qualified Location. A qualified location is a location where:

- (1) the majority of the activities conducted by the applicant are a qualified activity per Neb. Rev. Stat. §77-6818 (1). Determining the majority of the business activities will be based on the number of employees working in the respective business activities, or
- (2) seventy-five percent of the revenue derived at the location is either from sales to unrelated customers outside of Nebraska according to sourcing rules or sales to customers who are or would otherwise be members of the same unitary group when the related member delivers or provides the goods to a location outside Nebraska and the majority of the business activities are for activities other than agriculture, forestry, fishing, hunting, transportation, warehousing, information, utilities, mining, quarrying, oil and gas extraction, public administration, or

construction. The majority of the business activities shall be made based on the number of employees working in the respective business activities.

Qualified Property. Qualified property is any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended (IRC), or the components of such property, that will be located and used at a qualified location. Qualified property does not include: (1) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft; or (2) property that is rented by the taxpayer to another person. Qualified property of the taxpayer, which is located at the Nebraska residence of a teleworker working on tasks interdependent with the work performed at the project, is deemed to be located and used at the project

Ramp-up Period. Ramp-up period means the period of time from the date of the complete application through the end of the fourth year after the year in which the complete application was filed with the DED Director.

Related Persons. Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either IRC § 267(b) and (c) or IRC § 707(b).
Review and Certification—base-year. A taxpayer may request that the Tax Commissioner review and certify base-year employment, compensation, and wage levels as reported by the taxpayer in the application.

Review and Certification—Qualified Locations. A taxpayer may request that the DED Director review and certify that the location or locations designated in the application are qualified locations under the ImagiNE Nebraska Act.

Taxpayer. A taxpayer is any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to income tax withholding under Neb. Rev. Stat. § 77-2753; and any entity that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to sales and use taxes and income tax withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under IRC § 501(a), as amended. Political subdivision includes any public corporation created for the benefit of a political subdivision and any group of political subdivisions forming a joint public agency, organized by interlocal agreement, or utilizing any other method of joint action.

Unitary Group. For purposes of the Act, a unitary group is one or more corporations or other business entities with common ownership and which conduct business as a single economic unit, including all activities in different lines of business which contribute to the single economic unit. Common ownership means one or more business entity owning 50% or more of another business entity.

Use Tax. Use tax is a complement to the state and local sales tax. Use tax is due only if the state or local sales tax was not paid. It is imposed at the same rate and on the same transactions as the sales tax. If the local sales tax is not properly paid on the original purchase, the local use tax is owed.

Year. Year means calendar year.

Year of Qualification. The year of qualification is the first year in which the company meets the required minimum employment and investment levels to receive benefits under the Act.

Contact Information:

For additional information regarding completing an application under the ImagiNE Nebraska Act, please refer to DED's [website](#). For assistance in completing an application, please contact DED at 402-471-3111 or email at ded.imagine@nebraska.gov.

Incentives Division
Nebraska Department of Economic Development
245 Fallbrook Blvd, Suite 002
Lincoln, NE 68521