

TITLE 316 - DEPARTMENT OF REVENUE

CHAPTER 29 - QUALITY JOBS ACT

REG-29-001 QUALITY JOBS ACT -- CONDUCT OF MEETINGS

001.01. The Board is the Quality Jobs Board. The members of the Board are the Governor, the State Treasurer, and the Chairperson of the Nebraska Investment Council.

001.01A Any two members of the Board shall constitute a quorum for the transaction of the business of the Board.

001.02 The Governor shall be the Chairperson of the Board.

001.03 The address of the Board is the Nebraska Department of Revenue.

001.04 The Tax Commissioner is designated as the Secretary of the Board with the following responsibilities:

001.04A The scheduling of a meeting when an application needs to be considered;

001.04B The publishing of the notices of the meeting according to the policies of the Board;

001.04C The keeping of the minutes of the meetings and other records of the Board;

001.04D The notification of the applicant of the decision of the Board;

001.04E Receiving and entering into the record any written testimony concerning an application; and

001.04F Consenting on behalf of the Board to an extension of time within which the Board is to make a decision.

001.05 The meeting of the Board shall be recorded by a court reporter.

001.05A The closed portion of the meeting shall be also recorded, and the record of that portion shall be sealed.

001.06 The Board shall decide within thirty days after receipt of the application whether it approves or disapproves the application, unless such time is extended by mutual written consent of the Board and the applicant.

(Section 77-4928, R.S.Supp., 1998, and section 77-4932, R.R.S. 1996. November 11, 1998.)

REG-29-002 QUALITY JOBS ACT -- APPLICATION

002.01 The application must request that the company be considered for approval under the Quality Jobs Act. The application shall also contain:

002.01A The exact name of the company and any related companies which will be included in the project;

002.01B A statement describing, in detail, the nature of the company's business, including the products sold and respective markets;

002.01C A detailed narrative that describes the proposed project, including how the company intends to attain and maintain the job and investment requirements:

002.01C(1) The number of base-year employees;

002.01C(2) The expected number of new employees;

002.01C(3) The expected timing of the hiring of the new employees;

002.01C(4) The average salaries expected by category for the new employees; and

002.01C(5) The anticipated timing and amounts of new investment in buildings and equipment.

002.01D If more than one location within this state is to be involved in the project, sufficient documentation to show that the employment and investment at the different locations are interdependent parts of the project plan;

002.01E A copy of the applicants authorization for the project;

002.01F A copy of the company's most recent financial report, federal income tax return, Nebraska income tax return, Nebraska reconciliation of income tax withheld, and Nebraska sales and use tax identification number; and

002.01G A five-thousand-dollar nonrefundable application fee payable to the Department of Revenue.

002.02 Any representations made by the applicant, or the applicants representatives, during the meeting before the Board shall become a part of the application.

002.03 The applicant shall specifically state whether they are requesting the wage benefit credit or the alternative wage benefit credit.

(Section 77-4928, R.S.Supp., 1998, and sections 77-4927.01, and 77-4932, R.R.S. 1996. November 11, 1998.)

REG-29-003 QUALITY JOBS ACT -- MEETING NOTICE

003.01 The Board shall give ten days notice of meetings by publication in at least six newspapers across the state.

003.02 The Board shall also give notice of meetings by publication in a newspaper that is local to the project area.

003.03 A copy of the notice shall be posted in the State Capitol and the State Office Building in Lincoln.

003.04 A copy of the notice shall be sent to the applicant.

003.05 A news release will be distributed.

(Section 84-1411, R.S.Supp., 1998, and section 77-4932, R.R.S. 1996. November 11, 1998.)

REG-29-004 QUALITY JOBS ACT -- CONFIDENTIALITY

004.01 The only information from the application, any supporting documents, or information received during a closed session of the Board that can be made public regarding an application, without the written approval of the applicant, is:

04.01A The name of the applicant;

04.01B The location or locations of the project;

04.01C The amount of increased employment; and

04.01D The amount of increased investment.

004.02 The decision of the Board shall be made in open meeting and is not confidential.

004.03 The confidential information contained in an application shall be discussed only in a closed session of the Board, unless the applicant waives its right to confidentiality in writing.

004.04 The only persons who may attend the closed session of the Board are the members of the Board, the representatives of the applicant, other persons invited at the request of the applicant, the Tax Commissioner, other employees of the Nebraska Department of Revenue, and the court reporter.

004.04A Other persons, as necessary, may be invited by the Board for the purpose of providing specific, confidential information. However, they may only attend the portion of the meeting necessary to provide the information requested by the Board.

004.05 The members of the Board will respect the confidentiality of the information received and will not disclose any confidential information regarding the applicant to any person other than the representatives of the applicant, the State Tax Commissioner or other employees of the Nebraska

Department of Revenue, except as specifically provided in this regulation.

004.06 Any applications, or parts of applications, provided to the members of the Board shall be numbered copies and shall be delivered to the offices of the board members in a double envelope.

004.06A All applications, or parts of applications, shall be returned to the Nebraska Department of Revenue at the conclusion of the meeting.

(Sections 77-4928, and 84-1410, R.S.Supp., 1998, section 77-4932, R.R.S. 1996, and section 84-1413, R.R.S. 1994. November 11, 1998.)

REG-29-005 QUALITY JOBS ACT -- DECISION CRITERIA

005.01 A project may be approved by the Board only if the application defines a project consistent with the legislative purposes contained in section 77-4902 in one or more qualified business activities within this state.

005.02 The project must result in:

005.02A The investment in qualified property of at least fifty million dollars and the hiring of at least five hundred new employees; or

005.02B The investment in qualified property of at least one hundred million dollars and the hiring of at least two hundred fifty new employees.

005.03 The new investment and employment must occur within seven years, meaning by the end of the sixth year after the end of the year the application was filed.

005.04 The Board shall be governed by and shall take into consideration all of the following factors in making its determination:

005.04A The timing, number, wage levels, employee benefit package, and types of new jobs to be created by the project;

005.04B The type of industry in which the company and the project would be engaged;

005.04C The timing, amount, and types of investment in qualified property to be made at the project; and

005.04D Whether the Board believes the project would occur in this state regardless of whether the application was approved.

005.05 The weight given to each factor shall be determined by each Board member individually for each application.

005.06 The Board shall determine whether to approve the company's application by majority vote based on its determination as to whether the project will sufficiently help enable the state to accomplish the purposes of the Quality Jobs Act.

(Section 77-4928, R.S.Supp., 1998, and section 77-4932, R.R.S. 1996. November 11, 1998.)

REG-29-006 QUALITY JOBS ACT -- AGREEMENT

006.01 If the project application is approved by the Board, the company and the state shall enter into a written agreement, which shall be executed on behalf of the state by the Tax Commissioner.

006.02 In the agreement, the company shall agree to complete the project and the state shall designate the approved plans of the company as a project and, in consideration of the company's agreement, agree to allow the wage benefit credit as provided for in the act.

006.03 The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement.

006.04 The agreement shall contain provisions to allow the Department of Revenue to verify that the required levels of employment have been attained and maintained.

006.05 The agreement shall contain such other conditions or requirements for the applicant as established by the Board to carry out the purposes of the Act.

(Section 77-4928, R.S.Supp., 1998, and section 77-4932, R.R.S. 1996. November 11, 1998.)

REG-29-007 QUALITY JOBS ACT -- WAGE BENEFIT CREDIT

007.01 The wage benefit credit shall be withheld by the company from the employee's compensation in the normal manner for state income tax withholding.

007.01A The wage benefit credit may be withheld only when the company exceeds the required levels of investment and employment for the year.

007.01B The amount withheld shall not be required to be paid over to the state and shall not constitute part of the trust fund or be owned by the state.

007.01C The amount withheld shall be paid or applied by the company in the manner designated in writing by the employee or as jointly agreed to in writing by the employee and the company.

007.01C(1) The company shall design a form for the making of the designation or agreement. The company must obtain the approval of the Department before using the form.

007.02 For purposes of the withholding reporting provisions of sections 77-2754 and 77-2756, the company shall report the wage benefit credit to the state and to the employee as a wage benefit credit separate from other income tax withholding.

007.03 If the wage benefit credit for any year exceeds five percent (5%) of the total compensation paid to all employees at the project, other than base-year employees, the amount retained in excess of five percent shall be paid to the Department of Revenue in the same manner as withholding under section 77-2756.

007.04 If any amount designated by the employee as a wage benefit credit has been through error or otherwise improperly paid to the state, it shall be refunded to the company who paid it upon application for refund filed within three years after payment.

007.05 If the wage benefit credit withheld by the company exceeds the nonrefundable credit allowed the employee as calculated in this subsection, the company shall refund the difference to the employee.

007.05A The company may request verification or substantiation of the amount claimed. Such verification or substantiation shall be confidential and used only for the determination of the claim filed by the employee.

007.06 A company shall notify employees individually in writing at the time the company reports the wage benefit credit to the employee of the right to claim a refund under this subsection by April 1 of each year.

007.06A The claim for the refund from the company shall be made by September 1 of the year when the employee files his or her individual income tax return or fifteen days after the employee files such tax return, whichever is later.

007.06B The company shall pay the refund to an employee within thirty days after the date a claim is filed.

(Section 77-2756, R.S.Supp., 1998, and sections 77-4921, 77-4927, and 77-4932, R.R.S. 1996. November 11, 1998.)

REG-29-008 QUALITY JOBS ACT -- EMPLOYEES CREDIT

008.01 Each employee shall be allowed on his or her Nebraska individual income tax return a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act.

008.02 The wage benefit credit shall not exceed the lesser of the amount withheld or the amount of Nebraska liability on the income received from the company.

008.02A The Nebraska liability on the income received from the company is (a) the income tax liability as shown on the return actually

filed, after all other nonrefundable credits but before any refundable credits, minus (b) the amount that the income tax liability, after all other nonrefundable credits but before any refundable credits, would be if the total compensation paid by the company in the taxable year were excluded from the adjusted gross income on the return.

008.03 The calculation of this nonrefundable credit shall be included with the employee's tax return and reported as determined by the Department of Revenue.

(Section 77-4927, and 77-4932, R.R.S. 1996. November 11, 1998.)

REG-29-009 QUALITY JOBS ACT -- ALTERNATIVE WAGE BENEFIT CREDIT

009.01 If the company has entered into an agreement with the state that provides for the alternative wage benefit credit, then the company shall receive the wage benefit credit in the manner provided in this regulation.

009.02 The wage benefit credit shall be paid or applied by the company for company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof, as determined by the company.

009.02A Nothing in this section shall be construed to limit the right of an employee or employees subject to a collective bargaining agreement to negotiate relative to such programs.

009.03 The wage benefit credit shall be an amount equal to the percentage specified in paragraph 009.04 multiplied by the amount by which the total compensation paid during each project year to employees of the company while employed at the project exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees.

009.03A Average compensation means the total compensation paid during each project year divided by the total number of equivalent employees at the project.

009.04 The percentage used to determine the wage benefit credit shall be:

If the average compensation is over	But not over	Then the credit percentage shall be
\$0	\$20,000	0%
\$20,000	\$30,000	3%
\$30,000	\$40,000	4%
\$40,000		5%

009.05 The wage benefit credit shall be allowed for each project year the company is above the required levels of investment and employment.

009.06 The wage benefit credit shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year.

009.06A The credit may be used to reduce the taxpayer's Nebraska income tax liability.

009.06B The credits shall be applied in the order in which they were first allowed.

009.06C The credit may be carried over until fully utilized, except that the credit may not be carried over more than eight years after the end of the entitlement period.

009.07 The wage benefit credit shall not be transferable.

(Sections 77-4921, 77-4927.01, and 77-4932, R.R.S. 1996. November 11, 1998.)

REG-29-010 QUALITY JOBS ACT -- RECAPTURE

010.01 If the company fails either to meet the required levels of employment or investment for the project by the end of the sixth year after the end of the year the application was filed or to utilize such project in a qualified business at or above the required levels of employment and investment required in the Quality Jobs Act for the entire entitlement period, all or a portion of the wage benefit credit shall be recaptured directly by the state from the company or shall be disallowed.

010.02 In no event shall any wage benefit credit be required to be paid back directly or indirectly by the employees, but instead shall be paid to the state by the company.

010.03 In the case of a company which has failed to meet the required levels within the required time period, all wage benefit credits shall be disallowed, and if any have been inadvertently received, they shall be paid by the company to the state.

010.04 In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period:

010.04A No wage benefit credits shall be allowed, and if already retained by the company, shall be paid to the Department of Revenue, for the actual year or years in which the required levels of employment or investment were not maintained;

010.04B For wage benefit credits allowed in prior years, one-tenth of the credits shall be recaptured from the company for each year the required levels of employment or investment were not maintained; and

010.04C For wage benefit credits for future years, one-tenth of the credits otherwise allowable shall not be allowed for each year the required levels of employment or investment were not maintained in previous years.

010.04D When the required levels are not maintained for more than one year any recapture shall be calculated on the allowable credits before any other recapture.

010.04E Any amount paid to the state under Reg-29-007.03, or subdivision 010.04A of this regulation shall not counted as either part of the recapture for any other subdivision, and as an allowable amount subject to recapture.

010.05 Any amounts required to be recaptured shall be deemed to be an underpayment of tax, shall be immediately due and payable, and shall constitute a lien on the assets of the company.

010.05A When wage benefit credits were received in more than one year, the credits received in the most recent year shall be recovered first and then the credits received in earlier years up to the extent of the required recapture.

010.06 Interest and penalties accrue as follows:

010.06A In the case of a company which has failed to meet the required levels within the required time period, interest accrues from the time the withholding should have been paid to the state;

010.06B In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period, interest first accrues from the time of the original due date for the income return for the year in which the company failed to maintain the required levels; and

010.06C Penalties do not accrue until ninety days after the requirement for recapture or disallowance becomes known or should have become known to the company.

010.07 The recapture or disallowance required by this section may be waived by the Board if the Board finds the failure to attain or maintain the required levels of employment or investment was caused by unavoidable circumstances such as an act of God or national emergency.

(Section 77-4929, R.S.Supp., 1998, and section 77-4932, R.R.S. 1996. November 11, 1998.)

