

GIL 29-17-3 Tax Incentives: Treatment of the Acquisition of an Existing Business under the Nebraska Advantage Microenterprise Tax Credit Act

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September 19, 2017

Dear XXXX:

You have asked whether the acquisition of an existing business may be treated as new investment and new employment under the Nebraska Advantage Microenterprise Tax Credit Act (Act), [Neb. Rev. Stat. §§ 77-5901 through 77-5908](#). Because of the nature of the question asked, we are providing this General Information Letter (GIL) in response.

GILs address general questions; provide analysis of issues; and direct taxpayers to the Nebraska statutes, Nebraska Department of Revenue (Department) regulations, revenue rulings, or other sources of information to help answer a question. A GIL is a statement of current Department policy, and taxpayers may rely on the Department to follow the principles or procedures described in a GIL until it is rescinded or superseded. You may also find current regulations, revenue rulings, information guides, taxpayer rulings, and other GILs that may be helpful to you at revenue.nebraska.gov.

The Act provides refundable “tax credits equal to twenty percent of the taxpayer’s new investment or employment in the microbusiness” ([Neb. Rev. Stat. § 77-5906](#)). [Neb. Rev. Stat. § 77-5905\(1\)\(c\)](#) requires that the Department find that the investment and employment in a microbusiness “will create new income or jobs” in order to approve tax credits under the Act. When a taxpayer purchases an existing business, he or she acquires property that is new to the taxpayer. The taxpayer may also retain employees who previously worked for the acquired business. However, because the business, property, and jobs existed in the community prior to the time the taxpayer acquired the business, the investment and employment is not new to the community. With this in mind, the question is whether investment and employment that is not new to the community, but is new to the taxpayer, can generate tax credits under the Act.

The stated purpose of the Act is to provide tax credits to taxpayers “for creating or expanding microbusinesses that contribute to the state’s economy through the creation of new or improved income, self-employment, or other new jobs” ([Neb. Rev. Stat. § 77-5902](#)). The Act defines new investment as “the increase during the tax year over the year prior to the application in the [taxpayer’s] purchases . . .” ([Neb. Rev. Stat. § 77-5903 \(5\)](#)). New employment is defined as “the amount by which the total compensation plus the employer cost for health insurance for employees paid during the tax year to or for employees who are Nebraska residents exceeds the total compensation paid plus the employer cost

for health insurance for employees to or for employees who are Nebraska residents in the tax year prior to application” ([Neb. Rev. Stat. § 77-5903\(4\)](#)).

After reviewing these statutory provisions in conjunction with the stated purpose of the Act, the Department has determined that the acquisition of an existing business cannot, by itself, generate tax credits under the Act. While the investment and employment of the acquired business may be new to the taxpayer, the transaction does not create or expand a microbusiness, as contemplated by the Act. For this reason, the acquisition of a business that existed in the year prior to the year of application will be treated as though the taxpayer had owned the business in the year prior to the year of application for purposes of calculating tax credits under the Act. In practice, this means that:

1. The purchase price of acquiring an existing business will not be counted as new investment; and
2. The compensation and employer cost of health insurance paid by the previous owner of the acquired business in the year prior to application is included in the base year, and will be subtracted from the compensation and employer cost of health insurance in the tax year for the calculation of new employment.

A taxpayer who acquires an existing business may earn tax credits on all purchases that otherwise meet the criteria for new investment identified in [Neb. Rev. Stat. § 77-5903\(5\)](#). In addition, the taxpayer may earn tax credits on the compensation and employer cost of health insurance exceeding the amount paid to employees of the acquired business during the year prior to application.

For the Tax Commissioner

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