

# Legislative Performance Audit Committee

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Speaker Greg Adams  
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## Memorandum

To: LR 444 Committee Members  
From: Audit staff  
Date: July 18, 2014  
Re: Questions raised at June 19 Meeting

This memo responds to several questions raised by members at the June 19 meeting.

### Advantage Act State Liability

What is the State liability for Advantage Act incentives, including companies that have qualified for credits but are not yet earning them? (Senator Schumacher)

The Department of Revenue does not release projections about tax credits companies are likely to earn based on the information provided on their Advantage Act applications because the information relating to expected investment and job creation is not a reliable projection of what the company will ultimately accomplish.

According to the Department, the most complete projection of Advantage Act liabilities are reflected in the table *Fiscal Analysis of the Nebraska Advantage Act* from the Department's annual report to the Legislature. Those projections are based on economic modeling that takes into account many factors, including historical trends in the program, such as the number of applications received and signed, as well as credits earned and used. The projections reflect the relatively short experience under the Advantage Act as well as the longer history with its predecessor, LB 775. The 2014 annual report projects the following state revenue loss for each year from 2014 through 2024.

Calendar Year	Projected State Revenue Gain (Loss)	Calendar Year	Projected State Revenue Gain (Loss)
2014	(\$27,965,616)	2020	(\$102,865,801)
2015	(\$44,521,443)	2021	(\$110,812,134)
2016	(\$55,938,879)	2022	(\$120,910,338)
2017	(\$71,545,238)	2023	(\$131,656,836)

2018	(\$80,720,807)	2024	(\$144,151,256)
2019	(\$88,922,825)		

**Microenterprise Program Qualifications**

Are there additional qualifications for the Microenterprise program or could any business with five or fewer employees qualify? Could one person create multiple businesses and earn multiple credits? (Speaker Adams)

One person could create multiple businesses that might qualify for the microenterprise incentive, however the statutes limit that person *and his or her relations* to a lifetime total benefit of \$10,000. An individual with multiple qualifying businesses could theoretically receive a portion of the \$10,000 benefit for each business but the total could not exceed \$10,000.

Other qualifications include that the business must: be located in a designated distressed area and demonstrate growth in investments and compensation. Additionally, the program historically has had more applications than could be funded under the existing \$2 million annual cap so not all qualified applicants receive the benefit.

**Incentives in States without Corporate Income Tax**

Are the incentives offered in states without corporate income taxes as complicated as the Advantage Act? (Senator Schumacher)

Six states do not have corporate income taxes: Nevada, Ohio, South Dakota, Texas, Washington, and Wyoming. We reviewed the incentives offered by South Dakota, Texas, and Wyoming in our September 2013 audit report, and found that, of those three, only Texas offered incentives in the form of tax credits. Other incentives, such as grants or exemptions, are available in South Dakota and Wyoming, but there are fewer programs than in many states with income taxes. Texas tax credits can be used for other taxes, such as property or severance tax liabilities.

Of the three states not covered in our report, we found a number of incentives. Nevada has a limited number of tax abatements with requirements for investment, job creation, or wage levels. The abatements are simple in nature however, and not tiered like the Advantage Act. Ohio offers a wide variety of incentive programs, including credits, exemptions, loans, and grants, but none with the complexity of the Advantage Act. Washington also offers a large number of incentive programs. The programs in Washington are frequently targeted at business and operations (B&O) taxes and sales and use taxes.

## **Movement between Advantage Act Tiers**

How often do companies with signed agreements move from one tier to another?  
(Senator Harms)

According to the Department, a company may move to a lower tier than the one in which it qualified for benefits but cannot move to a higher tier. (There are some exceptions—for example, Tier 1 has fewer qualifying industries than do several other tiers. A business could not move from one of those tiers to Tier 1 unless the industry qualifies under Tier 1.) A company might be likely to drop to a tier with lower job or investment thresholds if it determined that it was not likely to meet the thresholds to which it had originally committed. According to the Department, to-date, that hasn't happened often.

## **Existing Job and Investment Thresholds**

Can the Department of Revenue and the Department of Economic Development provide any insight into the basis for the existing Advantage Act job and investment thresholds?  
(Senator Hadley)

Neither department had specific information on the basis for the current thresholds.

The Department of Revenue pointed out that some of the investment and job creation requirements were carried over from the earlier incentive act (LB 775) but had no additional information about them. They suggested that the Committee might talk to legislators who were involved in the legislation to get their perspectives.

The Department of Economic Development suggested that the thresholds were set to encourage businesses to do more than they might have done without the incentives while balancing the potential impact on the state budget.