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State Auditor Mike Foley Informs the Nebraska Legislature of the Profound Impact of Corporate Tax Incentives Programs on Future State Budget Options

In a letter sent today to all members of the Nebraska Unicameral Legislature, State Auditor Mike Foley highlighted the cumulative effect of prior corporate tax incentive legislation and its significant potential impact upon future State budget options.

The letter concludes that over the next four fiscal years – commencing July 1 2025, over $1.5 billion in corporate tax incentives will be used and will have a significant impact on the availability of State General Funds.

Foley's letter cites data from the Nebraska Department of Revenue (Department), asserting that corporate tax incentives have resulted in over $25 billion in qualifying capital investments since 2006 as well as the consequential creation of over 33,000 new full-time jobs in this state.

"Whether the claimed benefits are accurate or not," Foley noted, "the significant tax breaks now being paid to corporate taxpayers are real and measurable."

Foley observed further, "As a former State senator who supported economic development tax incentives, I think it is critical for today's legislators to have an accurate understanding of these initiatives and their future impact on State resources."

Foley continued, "The Nebraska Department of Revenue publishes highly detailed information on this matter each year; however, with turnover in the Legislature and the crush of so many other policy questions and responsibilities, many Senators may not be fully informed of how yesterday's legislative decisions will most assuredly influence tomorrow's policy choices."

Using publicly available information pertaining to the structure and use of tax incentives, Foley's letter does not opine on the merits of tax incentive programs or recommend any particular legislative action; instead, it attempts to distill the most relevant information on the programs for consideration by

Nebraska's key policymakers. "The heavy lifting of making tax policy decisions is the exclusive province of the State Legislature," remarked Foley.

The bulk of the letter to the senators focuses on tax incentive legislation enacted in 2005, known as the "Nebraska Advantage Act" (Act), and, to a lesser extent, the newer iteration of that program, the "ImagiNE Nebraska Act" (ImagiNE), adopted by the Legislature in 2020.

In a nutshell, a qualifying company earns a certain amount of credits annually for meeting specific investment and employment benchmarks, and those credits may be used at a later date for any of the following benefits: 1) credit refunds of sales and use taxes paid; 2) credit refunds or offsets of income taxes paid; and 3) credit refunds of real property taxes paid. Additional benefits available include direct refunds of sales and use taxes and personal property tax exemptions.

Under the Act, participating companies in Nebraska have already qualified for $2.6 billion in tax credits, the bulk of which (roughly $1.4 billion) remains unused. The letter notes that, as of November 2024, some 57 additional businesses were pending qualification to earn yet more credits – through which hundreds of millions of dollars of additional tax benefits could be obtained in the future. Obviously, the eventual use of tax credits diminishes State revenues.

The Department projects that $1.8 billion in additional tax credits will be used from fiscal year 2025 through fiscal year 2034. Over the next four fiscal years – commencing July 1, 2025 – over $1.1 billion in tax credits used and direct sales and use tax refunds are projected to be paid. This amount, in addition to the $421 million for the ImagiNE program explained below, results in a $1.5 billion impact on the State General fund over the next four fiscal years. The impact on the State's coffers will be quite noticeable, therefore, in a relatively short time.

Use of tax credits under the Act impacts not only State revenues but also those of Nebraska's political subdivision. When qualifying businesses use credits earned to obtain a refund of prior tax payments, including local-option sales and use taxes levied by municipalities, those local communities are denied an important source of revenue.

Since inception of the Act, nearly $163 million in local sales and use taxes have been refunded to qualifying companies, resulting in a direct reduction of tax revenues originally intended for the levying municipalities.

In order to receive tax breaks under the Act, participating businesses are permitted to self-report to the Department that the investment and job creation requirements of the law have been, and continue to be, met. The Department is supposed to perform both an initial qualification audit and periodic maintenance audits afterwards to verify that information. These audits, it should be noted, are the Department's only mechanisms for ensuring that participating companies qualify for the benefits received.

Today's letter to the Legislature references a previous management letter from Foley's office, dated December 18, 2024, pointing out serious deficiencies in the Department's qualification and maintenance audit processes alike. At the time, the audit team observed that 14 of 20 participating companies tested lacked a timely qualification audit. Foley's staff found also that 17 of those 20 businesses never had a maintenance audit. A copy of that management letter is available on the Auditor of Public Accounts' webpage at https://auditors.nebraska.gov/.

"Without the proper and consistent performance of qualification and maintenance audits," Foley stated, "the Department is incapable of confirming the accuracy of reports for either qualified capital investments or increases in new jobs – both of which were expected when the Act was being promoted to the Legislature."

In the wake of the slow and gradual winding down of the Act – per statute, applications for participation were accepted until December 31, 2020 – the Legislature implemented a new economic development tax incentive program, ImagiNE. That more recent legislation's provisions include the requirement for the Department of Economic Development to approve the corporate applications, and that tax benefits can be used prior to any verification that the required investment or increases in new jobs were met.

Under the superseding ImagiNE statutes, the Legislature has capped the total new annual tax incentives that can be granted. The maximum annual limitation for 2026 equals 3% of the actual general fund receipts to the State. For fiscal year 2024, the Tax Commissioner certified nearly $7.2 billion in net General Fund receipts – 3% of which totals approximately $215 million. The eventual ramp-up in newly earned tax credits under this act to the cap amount is uncertain.

Nevertheless, the Department projected that over the next four fiscal years – beginning July 1, 2025, these new credits will impact the State General Fund by approximately $421 million

Another important issue addressed in Foley's letter is the amount of delinquent and protested tax balances by the Department each year. Although these amounts are generally unrelated to business tax incentives, Foley believes calling this to the attention of the Legislature is timely because of the impact on tax and budget decisions.

Using the Department's own data, Foley has disclosed that the total delinquent and protested tax balances as of June 30, 2024, exceeds $657 million.

"When you combine over $1.5 billion in business tax incentives to be used over the next four fiscal years plus potentially hundreds of millions of dollars more in uncollected tax proceeds, the result is a staggering loss of revenue to the State – all of which must be counterbalanced in some way," said Foley. "The Legislature must be made aware of these facts in order to pursue sound fiscal policies."

A copy of the letter to the Legislature can be found at:
https://auditors.nebraska.gov/