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MULTISTATE INCOME/FRANCHISE TAX

Nebraska prohibits certain foreign companies from receiving state tax credits

Tax Alert

Overview

On June 4, 2025, Nebraska Legislative Bill 644 ("L.B. 644"), an act relating to foreign entities, was signed into law. Among the changes enacted include Neb. Rev. Stat. § 77-3, 114, which provides that effective October 1, 2025, certain foreign entities are no longer eligible to receive any benefits from Nebraska's tax credit and incentive programs. The Nebraska Department of Revenue recently issued a Notice about this act.

This Tax Alert provides more details about the relevant provisions in L.B. 644.

Summary of L.B. 644

Effective October 1, 2025, Nebraska prohibits foreign adversarial companies ("FAC") from receiving any state tax benefits or incentives. The prohibition applies to entities applying for credits, investors who claim the entity's credits on their tax returns, and individuals who claim credits based on employment with or a donation to an FAC. Accordingly, any Nebraska tax credits owned by an FAC on or after October 1, 2025, will be permanently disallowed, including any credits that were transferred to an FAC, any credits from past years that have been carried forward, and any credits that were owned by an FAC on October 1, 2025, and then later transferred to an eligible entity.

For purposes of Neb. Rev. Stat. § 77-3, 114, a "foreign adversary" is defined as those countries listed under federal regulation 15 C.F.R. § 791.4 as of April 1, 2025, which includes:

- The People's Republic of China, including the Hong Kong Special Administrative Region and the Macau Special Administrative Region (China);
- Republic of Cuba (Cuba);
- Islamic Republic of Iran (Iran);
- Democratic People's Republic of Korea (North Korea);
- Russian Federation (Russia); and
- Venezuelan politician Nicolás Maduro (Maduro Regime).

A "foreign adversary company" is defined as:

- Any corporation, partnership, association, organization, or other combination of persons, which:
  - is organized under the laws of a foreign adversary;
  - has its principal place of business within a foreign adversary;
  - is owned in whole or in part, operated, or controlled by the government of a foreign adversary; or
  - is a subsidiary or parent of any company otherwise described; and
- "Government of a foreign adversary" means "any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any foreign adversary, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States."

As noted above, an FAC may not claim any benefits and credits under a state incentive program or earn any future credits starting on October 1, 2025. The benefits and credits disallowed include but are not limited to those provided under the Nebraska Advantage Act, the ImagiNE Nebraska Act, the Nebraska Advantage Research and Development Act, and other credit and incentive programs awarded by legislation or the Governor's Office. Nebraska taxpayers will be asked to self-identify on relevant tax returns if they are an FAC or if they are claiming any credits related to an FAC.

Considerations

Besides Nebraska, at least two other states, Pennsylvania (*S.B. 282, signed by gov. 12/14/23*) and New Jersey (*S. 1889 (P.L.2022, c.3.), signed by gov. 3/9/22*) have previously enacted restrictions on certain foreign entities from engaging in various business activities, including receiving state tax credits and benefits. The Pennsylvania and New Jersey bills are summarized in our State Tax Matters newsletters dated December 22, 2023, and April 1, 2022, respectively. Affected taxpayers should consult with their tax advisors to determine what options exist for any existing credits and the potential financial impact of any disallowed credits.

Get in touch

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