

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 872

Final Reading

Introduced by Hadley, 37; Cornett, 45; Mello, 5; Price, 3; Smith,
14.

Read first time January 06, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2734.04 and 77-2734.14, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to apportionment
4 of income between states; to define and redefine terms;
5 to provide an operative date; and to repeal the original
6 sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2734.04, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 77-2734.04 As used in sections 77-2734.01 to 77-2734.15,
4 unless the context otherwise requires:

5 (1) Annual average amortized loan balance means the total
6 of the ending monthly values in the tax year divided by the number of
7 months in the tax year;

8 (2) Application service means computer-based services
9 provided to customers over a network for a fee without selling,
10 renting, leasing, licensing, or otherwise transferring computer
11 software. Application service includes, but is not limited to,
12 software as a service, platform as a service, or infrastructure as a
13 service;

14 (3) Billing address means the location indicated in the
15 books and records of the taxpayer as the address of record where the
16 bill relating to the customer's account is mailed;

17 (4) Borrower located in this state means:

18 (a) A borrower who is engaged in a trade or business in
19 this state; or

20 (b) A borrower whose billing address is in this state,
21 but is not engaged in a trade or business in this state;

22 (5) Buyer includes a buyer, licensee, user, or person
23 providing consideration for the use of an item or service;

24 ~~(1)~~ (6) Commercial domicile shall mean means the
25 principal place from which the trade or business of the taxpayer is

1 directed or managed;

2 (7) Communications company means any entity that:

3 (a) Is:

4 (i) A telecommunications company as defined in section
5 86-119 that provides a telecommunications service as defined in
6 section 86-121 or provides broadband, Internet, or video services as
7 defined in section 86-593;

8 (ii) A communications company that provides the
9 electronic transmission, conveyance, or routing of voice, data,
10 audio, video, or any other information or signals to a point, or
11 between or among points, and includes such transmission, conveyance,
12 or routing in which computer processing applications are used to act
13 on the form, code, or protocol of the content for purposes of
14 transmission, conveyance, or routing without regard to whether such
15 service is referred to as a voice over Internet protocol service or
16 is classified by the Federal Communications Commission as enhanced or
17 value added. The company may also provide video programming provided
18 by, or generally considered comparable to programming provided by, a
19 television broadcast station, regardless of the medium, including the
20 furnishing of transmission, conveyance, and routing of such services
21 by the programming service provider. Video programming includes, but
22 is not limited to, cable service as defined in 47 U.S.C. 522 and
23 video programming services delivered by providers of commercial
24 mobile radio service, as defined in 47 C.F.R. 20.3; or

25 (iii) A broadcast company that provides an over-the-air

1 broadcast radio station or over-the-air broadcast television station;
2 and

3 (b) Owns, operates, manages, or controls any plant or
4 equipment used to furnish telecommunications service, communication
5 services, broadband services, Internet service, or broadcast services
6 directly or indirectly to the general public at large and derives at
7 least seventy percent of its gross sales for the current taxable year
8 from the provision of these services. For purposes of the seventy-
9 percent test, gross sales does not include interest, dividends,
10 rents, royalties, capital gains, or ordinary gains from asset
11 dispositions, other than in the normal course of business;

12 (2)-(8) Compensation shall mean means wages, salaries,
13 commissions, and any other form of remuneration paid to employees for
14 personal services;

15 (3)-(9) Corporate taxpayer shall mean means any
16 corporation that is not a part of a unitary business or the part of a
17 unitary business, whether it is one or more corporations, that is
18 doing business in this state. Corporate taxpayer shall does not
19 include any corporation that has a valid election under subchapter S
20 of the Internal Revenue Code or any financial institution as defined
21 in section 77-3801;

22 (4)-(10) Corporation shall mean means all corporations
23 and all other entities that are taxed as corporations under the
24 Internal Revenue Code;

25 (11) Credit card means a credit card, debit card,

1 purchase card, charge card, and travel or entertainment card;

2 ~~(5)-(12)~~ Doing business in this state shall mean means
3 the exercise of the corporation's franchise in this state or the
4 conduct of operations in this state that exceed the limitations
5 provided in 15 U.S.C. 381 on a state imposing an income tax;

6 ~~(6)-(13)~~ Federal taxable income shall mean means the
7 corporate taxpayer's federal taxable income as reported to the
8 Internal Revenue Service or as subsequently changed or amended.
9 Except as provided in subsection (5) or (6) of section 77-2716, no
10 adjustment shall be allowed for a change from any election made or
11 the method used in computing federal taxable income. An election to
12 file a federal consolidated return shall not require the inclusion in
13 any unitary group of a corporation that is not a part of the unitary
14 business;

15 (14) Intangible property means all personal property
16 which is not tangible personal property and includes, but is not
17 limited to, patents, copyrights, trademarks, trade names, service
18 names, franchises, licenses, royalties, processes, techniques,
19 formulas, and technical know-how but excludes money;

20 (15) Loan means any extension of credit resulting from
21 direct negotiations between the taxpayer and its customer or the
22 purchase, in whole or in part, of an extension of credit from another
23 person. Loan includes participations, syndications, and leases
24 treated as loans for federal income tax purposes. Loan does not
25 include properties treated as loans under section 595 of the Internal

1 Revenue Code prior to its repeal by Public Law 104-188, futures or
2 forward contracts, options, notional principal contracts such as
3 swaps, credit card receivables, including purchased credit card
4 relationships, noninterest bearing balances due from depository
5 institutions, cash items in the process of collection, federal funds
6 sold, securities purchased under agreements to resell, assets held in
7 a trading account, securities, interests in a real estate mortgage
8 investment conduit or other mortgage-backed or asset-backed security,
9 and other similar items;

10 (16) Loan secured by real property means a loan or other
11 obligation which, at the time the original loan or obligation was
12 incurred or during the current taxable year, was secured by real
13 property. A loan secured by real property includes an installment
14 sales contract for real property;

15 (17) Loan secured by tangible personal property means a
16 loan or other obligation which, at the time the original loan or
17 obligation was incurred or during the current taxable year, was
18 secured by tangible personal property. A loan secured by tangible
19 personal property includes an installment sales contract for tangible
20 personal property;

21 (18) Loan servicing fee includes (a) fees or charges for
22 originating and processing loan applications, including, but not
23 limited to, prepaid interest and loan discounts, (b) fees or charges
24 for collecting, tracking, and accounting for loan payments received,
25 and (c) gross receipts from the sale of loan servicing rights;

1 (19) Participation means an extension of credit in which
2 an undivided ownership interest is held on a pro rata basis in a
3 single loan or pool of loans and related collateral;

4 ~~(7)-(20) Sales shall mean means~~ all gross receipts of the
5 taxpayer, ~~except: +~~

6 (a) Income from discharge of indebtedness;

7 (b) Amounts received from hedging transactions involving
8 intangible assets; or

9 (c) Net gains from marketable securities held for
10 investment;

11 ~~(8)-(21) Single economic unit shall mean means~~ a business
12 in which there is a sharing or exchange of value between the parts of
13 the unit. A sharing or exchange of value occurs when the parts of the
14 business are linked by (a) common management or (b) common
15 operational resources that produce material (i) economies of scale,
16 (ii) transfers of value, or (iii) flow of goods, capital, or services
17 between the parts of the unit.

18 (A) For the purposes of this subdivision, common
19 management ~~shall include, includes, but is not be~~ limited to, (I) a
20 centralized executive force or (II) review or approval authority over
21 long-term operations with or without the exercise of control over the
22 day-to-day operations.

23 (B) For the purposes of this subdivision, common
24 operational resources ~~shall include, includes, but is not be~~ limited
25 to, centralization of any of the following: Accounting, advertising,

1 engineering, financing, insurance, legal, personnel, pension or
2 benefit plans, purchasing, research and development, selling, or
3 union relations;

4 ~~(9)~~-(22) State ~~shall mean~~ means any state of the United
5 States, the District of Columbia, the Commonwealth of Puerto Rico,
6 any territory or possession of the United States, and any foreign
7 country or political subdivision thereof;

8 ~~(10)~~-(23) Subject to the Internal Revenue Code ~~shall mean~~
9 means a corporation that meets the requirements of section 243 of the
10 Internal Revenue Code in order for its distributions to qualify for
11 the dividends-received deduction;

12 ~~(11)~~-(24) Taxable income ~~shall mean~~ means federal taxable
13 income as adjusted and, if appropriate, as apportioned;

14 ~~(12)~~-(25) Taxable year ~~shall mean~~ means the period the
15 corporate taxpayer used on its federal income tax return;

16 (26) Treasury function is the pooling, management, and
17 investment of intangible assets to satisfy the cash-flow needs of the
18 trade or business, including, but not limited to, providing liquidity
19 for a taxpayer's business cycle, providing a reserve for business
20 contingencies, or business acquisitions. A taxpayer principally
21 engaged in the trade or business of purchasing and selling intangible
22 assets of the type typically held in a taxpayer's treasury function,
23 such as a registered broker-dealer, is not performing a treasury
24 function with respect to income so produced;

25 ~~(13)~~-(27) Unitary business ~~shall mean~~ means a business

1 that is conducted as a single economic unit by one or more
2 corporations with common ownership and shall include all activities
3 in different lines of business that contribute to the single economic
4 unit.

5 For the purposes of this subdivision, common ownership
6 ~~shall mean~~ means one or more corporations owning fifty percent or
7 more of another corporation; and

8 ~~(14)-(28)~~ Unitary group shall mean means the group of
9 corporations that are conducting a unitary business.

10 Sec. 2. Section 77-2734.14, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-2734.14 (1) The sales factor is a fraction, the
13 numerator of which is the total sales of the taxpayer in this state
14 during the tax period, and the denominator of which is the total
15 sales everywhere during the tax period.

16 (2) Sales of tangible personal property in this state
17 include:

18 (a) Property delivered or shipped to a purchaser, other
19 than the United States Government, within this state regardless of
20 the f.o.b. point or other conditions of the sale;

21 (b) Property shipped from an office, store, warehouse,
22 factory, or other place of storage in this state if (i) the purchaser
23 is the United States Government or (ii) for all taxable years
24 beginning or deemed to begin before January 1, 1995, under the
25 Internal Revenue Code of 1986, as amended, the taxpayer is not

1 taxable in the state of the purchaser;

2 (c) For all taxable years beginning or deemed to begin on
3 or after January 1, 1995, and before January 1, 1996, under the
4 Internal Revenue Code of 1986, as amended, two-thirds of the property
5 shipped from an office, store, warehouse, factory, or other place of
6 storage in this state if the taxpayer is not taxable in the state of
7 the purchaser; or

8 (d) For all taxable years beginning or deemed to begin on
9 or after January 1, 1996, but before January 1, 1997, under the
10 Internal Revenue Code of 1986, as amended, one-third of the property
11 shipped from an office, store, warehouse, factory, or other place of
12 storage in this state if the taxpayer is not taxable in the state of
13 the purchaser.

14 (3) For sales other than sales of tangible personal
15 property, except for sales as described in subsection (4) of this
16 section:

17 (a) Sales of a service are in this state if the sales are
18 derived from a buyer within this state. Sales of a service are
19 derived from a buyer within this state if:

20 (i) The service, when rendered, relates to real property
21 located in this state;

22 (ii) The service, when rendered, relates to tangible
23 personal property located in this state at the time the service is
24 received;

25 (iii) The service, when rendered, is provided to an

1 individual physically present in this state at the time the service
2 is received; or

3 (iv) The service, when rendered, is provided to a buyer
4 engaged in a trade or business in this state and relates to that part
5 of the trade or business then operated in this state. For services
6 described in this subdivision, if the buyer uses the service within
7 and without this state, calculated using any reasonable method, the
8 sales are apportioned between the use in this state in proportion to
9 the use of the service in this state and the other states;

10 (b) Sales of an application service are in this state if
11 the buyer uses the application service in this state. The application
12 service is used in this state if, the buyer, from a location in this
13 state:

14 (i) Uses it in the regular course of business in this
15 state; or

16 (ii) If the buyer is an individual, his or her billing
17 address is in this state.

18 If the buyer is not an individual and uses the
19 application service within and without this state, calculated using
20 any reasonable method, the sales are apportioned between the use in
21 this state in proportion to the use of the application service in
22 this state and the other states. If the location of a sale cannot be
23 determined, the sale of an application service is in the state from
24 which the order was placed in the regular course of the customer's
25 business. If that office cannot be determined, the sales are

1 considered received at the customer's billing address;

2 (c) Sales of intangible property are in this state if the
3 buyer uses the intangible property at a location in this state. If
4 the buyer uses the intangible property within and without this state,
5 the sales are apportioned between this state in proportion to the use
6 of the intangible property in this state and the other states. If the
7 location of a sale cannot be determined, the sale of intangible
8 property is in this state if the buyer's billing address is in this
9 state;

10 (d) Interest, dividends, investment income, and other net
11 gains from transactions in intangible assets held in connection with
12 a treasury function, other than net gains from the sale or redemption
13 of marketable securities, are in this state to the extent that it is
14 included in taxable income and to the extent the investment,
15 management, and record-keeping activities associated with corporate
16 investments occur in this state;

17 (e) Gross interest, fees, points, charges, and penalties
18 from loans, net gains from the sale of loans, and loan servicing fees
19 derived from loans owned by the taxpayer or another person, including
20 servicing participations, secured by real property or tangible
21 personal property are in this state if the property securing the loan
22 is located in this state. If the real or tangible personal property
23 securing the loan is located within and without this state, the gross
24 interest, fees, points, charges, and penalties from loans, net gains
25 from the sale of loans, and loan servicing fees derived from loans

1 owned by the taxpayer or another person, including servicing
2 participations, are based upon the ratio of the annual average
3 amortized loan balance of a loan secured by the real property or
4 tangible personal property located in this state to the annual
5 average amortized loan balance of a loan secured by the real property
6 or tangible personal property located within and without this state;

7 (f) Gross interest, fees, points, charges, and penalties
8 from loans, net gains from the sale of loans, and loan servicing fees
9 derived from loans owned by the taxpayer or another person, including
10 servicing participations, that are not secured by real or tangible
11 personal property are in this state if the borrower is located in
12 this state, which location shall be presumed to be the borrower's
13 billing address;

14 (g) Gross interest, fees, points, charges, and penalties
15 from credit card receivables and gross receipts from annual fees and
16 other fees charged to credit card holders are in this state if the
17 billing address of the credit card holder is in this state;

18 (h) Net gains, but not less than zero, from the sale of
19 credit card receivables are in this state if the billing address of
20 the credit card holder is in this state;

21 (i) Gross receipts from the lease, rental, or licensing
22 of tangible personal property are in this state to the extent the
23 property is located in this state;

24 (j) Gross receipts from the sale, lease, rental, or
25 licensing of real property are in this state if the real property is

1 located in this state; and

2 (k) Sales other than sales of tangible personal property
3 not specifically addressed in this subsection must be sourced so as
4 to fairly represent the extent of the taxpayer's business activity in
5 this state. This requirement will be considered met in the following
6 situations: (i) If the buyer is an individual, a sale is deemed to
7 have occurred at the buyer's billing address; and (ii) if the buyer
8 is not an individual and the sale is from an order placed in the
9 regular course of the customer's business, the sale is deemed to have
10 occurred in the state from which the order was placed and, if that
11 place cannot be readily determined, the sale is deemed to have
12 occurred at the customer's billing address.

13 (4) To continue the tax policy of this state which
14 enhances the deployment of broadband in rural and underserved areas
15 of this state, sales, other than sales of tangible personal property,
16 of a communications company are in this state if: (a) The income-
17 producing activity is performed in this state; or (b) the income-
18 producing activity is performed both in and outside this state and a
19 greater proportion of the income-producing activity is performed in
20 this state than in any other state, based on costs of performance.

21 ~~(3) Sales, other than sales of tangible personal~~
22 ~~property, are in this state if:~~

23 ~~(a) The income producing activity is performed in this~~
24 ~~state; or~~

25 ~~(b) The income producing activity is performed both in~~

1 ~~and outside this state and a greater proportion of the income-~~
2 ~~producing activity is performed in this state than in any other~~
3 ~~state, based on costs of performance.~~

4 Sec. 3. This act becomes operative for all taxable years
5 beginning or deemed to begin on or after January 1, 2014, under the
6 Internal Revenue Code of 1986, as amended.

7 Sec. 4. Original sections 77-2734.04 and 77-2734.14,
8 Reissue Revised Statutes of Nebraska, are repealed.