

AMENDMENTS TO LB288

Introduced by Linehan, 39.

1 1. Strike the original sections and insert the following new
2 sections:

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

5 77-2734.04 As used in sections 77-2734.01 to 77-2734.15, unless the
6 context otherwise requires:

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

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

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

18 (4) Borrower located in this state means:

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

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

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

25 (6) Commercial domicile means the principal place from which the
26 trade or business of the taxpayer is directed or managed;

27 (7) Communications company means any entity that:

1 (a) Is:

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

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

22 (iii) A broadcast company that provides an over-the-air broadcast
23 radio station or over-the-air broadcast television station; and

24 (b) Owns, operates, manages, or controls any plant or equipment used
25 to furnish telecommunications service, communication services, broadband
26 services, Internet service, or broadcast services directly or indirectly
27 to the general public at large and derives at least seventy percent of
28 its gross sales for the current taxable year from the provision of these
29 services. For purposes of the seventy-percent test, gross sales does not
30 include interest, dividends, rents, royalties, capital gains, or ordinary
31 gains from asset dispositions, other than in the normal course of

1 business;

2 (8) Compensation means wages, salaries, commissions, and any other
3 form of remuneration paid to employees for personal services;

4 (9) Corporate taxpayer means any corporation that is not a part of a
5 unitary business or the part of a unitary business, whether it is one or
6 more corporations, that is doing business in this state. Corporate
7 taxpayer does not include any corporation that has a valid election under
8 subchapter S of the Internal Revenue Code or any financial institution as
9 defined in section 77-3801;

10 (10) Corporation means all corporations and all other entities that
11 are taxed as corporations under the Internal Revenue Code;

12 (11) Credit card means a credit card, debit card, purchase card,
13 charge card, and travel or entertainment card;

14 (12) Doing business in this state means the exercise of the
15 corporation's franchise in this state or the conduct of operations in
16 this state that exceed the limitations provided in 15 U.S.C. 381 on a
17 state imposing an income tax. Doing business in this state includes the
18 sale, lease, or license of services, intangibles, or digital products to
19 customers in this state that exceed five hundred thousand dollars in the
20 previous or current calendar year;

21 (13) Federal taxable income means the corporate taxpayer's federal
22 taxable income as reported to the Internal Revenue Service or as
23 subsequently changed or amended. Except as provided in subsection (5) or
24 (6) of section 77-2716, no adjustment shall be allowed for a change from
25 any election made or the method used in computing federal taxable income.
26 An election to file a federal consolidated return shall not require the
27 inclusion in any unitary group of a corporation that is not a part of the
28 unitary business;

29 (14) Intangible property means all personal property which is not
30 tangible personal property and includes, but is not limited to, patents,
31 copyrights, trademarks, trade names, service names, franchises, licenses,

1 royalties, processes, techniques, formulas, and technical know-how but
2 excludes money;

3 (15) Loan means any extension of credit resulting from direct
4 negotiations between the taxpayer and its customer or the purchase, in
5 whole or in part, of an extension of credit from another person. Loan
6 includes participations, syndications, and leases treated as loans for
7 federal income tax purposes. Loan does not include properties treated as
8 loans under section 595 of the Internal Revenue Code prior to its repeal
9 by Public Law 104-188, futures or forward contracts, options, notional
10 principal contracts such as swaps, credit card receivables, including
11 purchased credit card relationships, noninterest bearing balances due
12 from depository institutions, cash items in the process of collection,
13 federal funds sold, securities purchased under agreements to resell,
14 assets held in a trading account, securities, interests in a real estate
15 mortgage investment conduit or other mortgage-backed or asset-backed
16 security, and other similar items;

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

21 (17) Loan secured by tangible personal property means a loan or
22 other obligation which, at the time the original loan or obligation was
23 incurred or during the current taxable year, was secured by tangible
24 personal property. A loan secured by tangible personal property includes
25 an installment sales contract for tangible personal property;

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

31 (19) Participation means an extension of credit in which an

1 undivided ownership interest is held on a pro rata basis in a single loan
2 or pool of loans and related collateral;

3 (20) Sales means all gross receipts of the taxpayer, except:

4 (a) Income from discharge of indebtedness;

5 (b) Amounts received from hedging transactions involving intangible
6 assets; or

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

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

14 (A) For the purposes of this subdivision, common management
15 includes, but is not limited to, (I) a centralized executive force or
16 (II) review or approval authority over long-term operations with or
17 without the exercise of control over the day-to-day operations.

18 (B) For the purposes of this subdivision, common operational
19 resources includes, but is not limited to, centralization of any of the
20 following: Accounting, advertising, engineering, financing, insurance,
21 legal, personnel, pension or benefit plans, purchasing, research and
22 development, selling, or union relations;

23 (22) State means any state of the United States, the District of
24 Columbia, the Commonwealth of Puerto Rico, any territory or possession of
25 the United States, and any foreign country or political subdivision
26 thereof;

27 (23) Subject to the Internal Revenue Code means a corporation that
28 meets the requirements of section 243 of the Internal Revenue Code in
29 order for its distributions to qualify for the dividends-received
30 deduction;

31 (24) Taxable income means federal taxable income as adjusted and, if

1 appropriate, as apportioned;

2 (25) Taxable year means the period the corporate taxpayer used on
3 its federal income tax return;

4 (26) Treasury function is the pooling, management, and investment of
5 intangible assets to satisfy the cash-flow needs of the trade or
6 business, including, but not limited to, providing liquidity for a
7 taxpayer's business cycle, providing a reserve for business
8 contingencies, or business acquisitions. A taxpayer principally engaged
9 in the trade or business of purchasing and selling intangible assets of
10 the type typically held in a taxpayer's treasury function, such as a
11 registered broker-dealer, is not performing a treasury function with
12 respect to income so produced;

13 (27) Unitary business means a business that is conducted as a single
14 economic unit by one or more corporations with common ownership and shall
15 include all activities in different lines of business that contribute to
16 the single economic unit.

17 For the purposes of this subdivision, common ownership means one or
18 more corporations owning fifty percent or more of another corporation;
19 and

20 (28) Unitary group means the group of corporations that are
21 conducting a unitary business.

22 Sec. 2. Original section 77-2734.04, Reissue Revised Statutes of
23 Nebraska, is repealed.