

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1225

Introduced by Wayne, 13.

Read first time January 20, 2022

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2734.04 and 77-3802, Reissue Revised Statutes of Nebraska; to
- 3 eliminate the franchise tax on financial institutions; to make
- 4 financial institutions subject to the corporate income tax; to
- 5 provide an operative date; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

16 (4) Borrower located in this state means:

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

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

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

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

25 (7) Communications company means any entity that:

26 (a) Is:

27 (i) A telecommunications company as defined in section 86-119 that
28 provides a telecommunications service as defined in section 86-121 or
29 provides broadband, Internet, or video services as defined in section
30 86-593;

31 (ii) A communications company that provides the electronic

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

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

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

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

29 (9) Corporate taxpayer means any corporation that is not a part of a
30 unitary business or the part of a unitary business, whether it is one or
31 more corporations, that is doing business in this state. Corporate

1 taxpayer does not include any corporation that has a valid election under
2 subchapter S of the Internal Revenue Code ~~or any financial institution as~~
3 ~~defined in section 77-3801;~~

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

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

8 (12) Doing business in this state means the exercise of the
9 corporation's franchise in this state or the conduct of operations in
10 this state that exceed the limitations provided in 15 U.S.C. 381 on a
11 state imposing an income tax;

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

20 (14) Intangible property means all personal property which is not
21 tangible personal property and includes, but is not limited to, patents,
22 copyrights, trademarks, trade names, service names, franchises, licenses,
23 royalties, processes, techniques, formulas, and technical know-how but
24 excludes money;

25 (15) Loan means any extension of credit resulting from direct
26 negotiations between the taxpayer and its customer or the purchase, in
27 whole or in part, of an extension of credit from another person. Loan
28 includes participations, syndications, and leases treated as loans for
29 federal income tax purposes. Loan does not include properties treated as
30 loans under section 595 of the Internal Revenue Code prior to its repeal
31 by Public Law 104-188, futures or forward contracts, options, notional

1 principal contracts such as swaps, credit card receivables, including
2 purchased credit card relationships, noninterest bearing balances due
3 from depository institutions, cash items in the process of collection,
4 federal funds sold, securities purchased under agreements to resell,
5 assets held in a trading account, securities, interests in a real estate
6 mortgage investment conduit or other mortgage-backed or asset-backed
7 security, and other similar items;

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

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

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

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

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

26 (a) Income from discharge of indebtedness;

27 (b) Amounts received from hedging transactions involving intangible
28 assets; or

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

30 (21) Single economic unit means a business in which there is a
31 sharing or exchange of value between the parts of the unit. A sharing or

1 exchange of value occurs when the parts of the business are linked by (a)
2 common management or (b) common operational resources that produce
3 material (i) economies of scale, (ii) transfers of value, or (iii) flow
4 of goods, capital, or services between the parts of the unit.

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

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

14 (22) State means any state of the United States, the District of
15 Columbia, the Commonwealth of Puerto Rico, any territory or possession of
16 the United States, and any foreign country or political subdivision
17 thereof;

18 (23) Subject to the Internal Revenue Code means a corporation that
19 meets the requirements of section 243 of the Internal Revenue Code in
20 order for its distributions to qualify for the dividends-received
21 deduction;

22 (24) Taxable income means federal taxable income as adjusted and, if
23 appropriate, as apportioned;

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

26 (26) Treasury function is the pooling, management, and investment of
27 intangible assets to satisfy the cash-flow needs of the trade or
28 business, including, but not limited to, providing liquidity for a
29 taxpayer's business cycle, providing a reserve for business
30 contingencies, or business acquisitions. A taxpayer principally engaged
31 in the trade or business of purchasing and selling intangible assets of

1 the type typically held in a taxpayer's treasury function, such as a
2 registered broker-dealer, is not performing a treasury function with
3 respect to income so produced;

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

8 For the purposes of this subdivision, common ownership means one or
9 more corporations owning fifty percent or more of another corporation;
10 and

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

13 Sec. 2. Section 77-3802, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 77-3802 (1) For taxable years beginning before January 1, 2023:

16 (a) ~~(1)~~ There is hereby imposed for each taxable year for the
17 privilege of doing business in this state a franchise tax on all
18 financial institutions with business locations in this state. Such
19 franchise tax shall be based on the average deposits of the financial
20 institution; -

21 (b) ~~(2)~~ The amount of the tax imposed by this section shall be the
22 number of cents, as determined by section 77-3803, multiplied by the
23 amount of average deposits of the financial institution in thousands of
24 dollars; -

25 (c) ~~(3)~~ The franchise tax imposed by this section shall not exceed
26 the limitation amount prescribed in section 77-3804; and -

27 (d) ~~(4)~~ Each financial institution shall file a separate franchise
28 tax return.

29 (2) For taxable years beginning on or after January 1, 2023, the
30 franchise tax imposed in this section shall no longer apply and all
31 financial institutions shall be subject to the tax imposed in section

1 77-2734.02.

2 Sec. 3. This act becomes operative on January 1, 2023.

3 Sec. 4. Original sections 77-2734.04 and 77-3802, Reissue Revised

4 Statutes of Nebraska, are repealed.