

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.