

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SPECIAL SESSION

LEGISLATIVE BILL 40

Introduced by Hughes, 24.

Read first time July 29, 2024

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2734.04, 77-2734.05, 77-2734.06, 77-2734.07, 77-2734.08,
3 77-2734.09, 77-2734.10, and 77-2734.15, Reissue Revised Statutes of
4 Nebraska, sections 77-2734.01 and 77-2734.02, Revised Statutes
5 Supplement, 2023, and section 77-2701, Revised Statutes Supplement,
6 2023, as amended by Laws 2024, LB937, section 67, Laws 2024, LB1023,
7 section 8, and Laws 2024, LB1317, section 80; to provide, change,
8 and eliminate definitions; to change provisions relating to the
9 determination, apportionment, adjustment, and reporting of taxable
10 income for corporations and other unitary businesses; to harmonize
11 provisions; to provide an operative date; and to repeal the original
12 sections.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Supplement, 2023, as
2 amended by Laws 2024, LB937, section 67, Laws 2024, LB1023, section 8,
3 and Laws 2024, LB1317, section 80, is amended to read:

4 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, 77-27,235,
5 77-27,236, and 77-27,238 to 77-27,241, section 71 of this act, section 11
6 of this act, and section 84 of this act and sections 12 to 17 of this act
7 shall be known and may be cited as the Nebraska Revenue Act of 1967.

8 Sec. 2. Section 77-2734.01, Revised Statutes Supplement, 2023, is
9 amended to read:

10 77-2734.01 (1) Residents of Nebraska who are shareholders of a small
11 business corporation having an election in effect under subchapter S of
12 the Internal Revenue Code or who are members of a limited liability
13 company organized pursuant to the Nebraska Uniform Limited Liability
14 Company Act shall include in their Nebraska taxable income, to the extent
15 includable in federal gross income, their proportionate share of such
16 corporation's or limited liability company's federal income adjusted
17 pursuant to this section. Income or loss from such corporation or limited
18 liability company conducting a business, trade, profession, or occupation
19 shall be included in the Nebraska taxable income of a shareholder or
20 member who is a resident of this state to the extent of such
21 shareholder's or member's proportionate share of the net income or loss
22 from the conduct of such business, trade, profession, or occupation
23 within this state, determined under subsection (2) of this section. A
24 resident of Nebraska shall include in Nebraska taxable income fair
25 compensation for services rendered to such corporation or limited
26 liability company. Compensation actually paid shall be presumed to be
27 fair unless it is apparent to the Tax Commissioner that such compensation
28 is materially different from fair value for the services rendered or has
29 been manipulated for tax avoidance purposes.

30 (2) The income of any small business corporation having an election
31 in effect under subchapter S of the Internal Revenue Code or limited

1 liability company organized pursuant to the Nebraska Uniform Limited
2 Liability Company Act that is derived from or connected with Nebraska
3 sources shall be determined in the following manner:

4 (a) If the small business corporation is a member of a unitary
5 group, the small business corporation shall be deemed to be doing
6 business within this state if any part of its income is derived from
7 transactions with other members of the unitary group doing business
8 within this state, and such corporation shall apportion its income by
9 using the apportionment factor determined for the entire unitary group,
10 including the small business corporation, under sections 77-2734.05 to
11 77-2734.15 and sections 12 to 17 of this act;

12 (b) If the small business corporation or limited liability company
13 is not a member of a unitary group and is subject to tax in another
14 state, it shall apportion its income under sections 77-2734.05 to
15 77-2734.15 and sections 12 to 17 of this act; and

16 (c) If the small business corporation or limited liability company
17 is not subject to tax in another state, all of its income is derived from
18 or connected with Nebraska sources.

19 (3) Nonresidents of Nebraska who are shareholders of such
20 corporations or members of such limited liability companies shall file a
21 Nebraska income tax return and shall include in Nebraska adjusted gross
22 income their proportionate share of the corporation's or limited
23 liability company's Nebraska income as determined under subsection (2) of
24 this section.

25 (4) The nonresident shareholder or member shall execute and forward
26 to the corporation or limited liability company before the filing of the
27 corporation's or limited liability company's return an agreement which
28 states he or she will file a Nebraska income tax return and pay the tax
29 on the income derived from or connected with sources in this state, and
30 such agreement shall be attached to the corporation's or limited
31 liability company's Nebraska return for such taxable year.

1 (5) For taxable years beginning or deemed to begin before January 1,
2 2013, in the absence of the nonresident shareholder's or member's
3 executed agreement being attached to the Nebraska return, the corporation
4 or limited liability company shall remit with the return an amount equal
5 to the highest individual income tax rate determined under section
6 77-2715.02 multiplied by the nonresident shareholder's or member's share
7 of the corporation's or limited liability company's income which was
8 derived from or attributable to this state. For taxable years beginning
9 or deemed to begin on or after January 1, 2013, in the absence of the
10 nonresident shareholder's or member's executed agreement being attached
11 to the Nebraska return, the corporation or limited liability company
12 shall remit with the return an amount equal to the highest individual
13 income tax rate determined under section 77-2715.03 multiplied by the
14 nonresident shareholder's or member's share of the corporation's or
15 limited liability company's income which was derived from or attributable
16 to this state. The amount remitted shall be allowed as a credit against
17 the Nebraska income tax liability of the shareholder or member.

18 (6) The Tax Commissioner may allow a nonresident individual
19 shareholder or member to not file a Nebraska income tax return if the
20 nonresident individual shareholder's or member's only source of Nebraska
21 income was his or her share of the small business corporation's or
22 limited liability company's income which was derived from or attributable
23 to sources within this state, the nonresident did not file an agreement
24 to file a Nebraska income tax return, and the small business corporation
25 or limited liability company has remitted the amount required by
26 subsection (5) of this section on behalf of such nonresident individual
27 shareholder or member. The amount remitted shall be retained in
28 satisfaction of the Nebraska income tax liability of the nonresident
29 individual shareholder or member.

30 (7) A small business corporation or limited liability company return
31 shall be filed if the small business corporation or limited liability

1 company has income derived from Nebraska sources.

2 (8) Notwithstanding any provision of this section to the contrary:

3 (a) For tax years beginning or deemed to begin on or after January
4 1, 2018, a small business corporation may annually make an irrevocable
5 election to pay the taxes, interest, or penalties levied by the Nebraska
6 Revenue Act of 1967 at the entity level for the taxable period covered by
7 such return. For tax years beginning on or after January 1, 2023, such
8 election must be made on or before the due date for filing the applicable
9 income tax return, including any extensions that have been granted;

10 (b) An electing small business corporation with respect to a taxable
11 period shall pay an income tax equivalent to the highest individual
12 income tax rate provided in section 77-2715.03 multiplied by the electing
13 small business corporation's net income as apportioned or allocated to
14 this state in accordance with the Nebraska Revenue Act of 1967, for such
15 taxable period;

16 (c) An electing small business corporation shall be treated as a
17 corporation with respect to the requirements of section 77-2769 for
18 payments of estimated tax. The requirement for payment of estimated tax
19 under section 77-2769 shall not apply for tax years beginning prior to
20 January 1, 2024. Payments of estimated tax made by an eligible small
21 business corporation that does not make an election under this subsection
22 shall be treated as income tax withholding on behalf of the shareholders;

23 (d) Except as provided in subdivision (e) of this subsection, the
24 shareholders of an electing small business corporation must file a
25 Nebraska return to report their pro rata or distributive share of the
26 income of the electing small business corporation in accordance with the
27 Nebraska Revenue Act of 1967, as applicable. In determining the sum of
28 its pro rata or distributive share and computing the tax under this
29 subsection, an electing small business corporation shall add back any
30 amount of Nebraska tax imposed under the Nebraska Revenue Act of 1967 and
31 deducted by the electing small business corporation for federal income

1 tax purposes under section 164 of the Internal Revenue Code;

2 (e) A nonresident individual who is a shareholder of an electing
3 small business corporation shall not be required to file a Nebraska tax
4 return for a taxable year if, for such taxable year, the only source of
5 income derived from or connected with sources within this state for such
6 shareholder, or for the shareholder and the shareholder's spouse if a
7 joint federal income tax return is filed, is from one or more electing
8 small business corporations or electing partnerships as defined in
9 subdivision (7)(a) of section 77-2727 for such taxable year and such
10 nonresident individual shareholder's tax under the Nebraska Revenue Act
11 of 1967 would be fully satisfied by the credit allowed to such
12 shareholder under subdivision (g) of this subsection;

13 (f) If the amount calculated under subdivision (a) of this
14 subsection results in a net operating loss, such net operating loss may
15 not be carried forward to succeeding taxable years;

16 (g) A refundable credit shall be available to the shareholders in an
17 amount equal to their pro rata or distributive share of the Nebraska
18 income tax paid by the electing small business corporation; and

19 (h)(i) For tax years beginning or deemed to begin on or after
20 January 1, 2018, but prior to January 1, 2023, the electing small
21 business corporation must make the election under this subsection on or
22 after January 1, 2023, but before December 31, 2025, in the form and
23 manner prescribed by the Tax Commissioner for all years for which the
24 election under this subsection is made on behalf of the electing small
25 business corporation. The Tax Commissioner shall establish the form and
26 manner, which shall not include any changes to the past returns other
27 than those that are directly related to the election under this
28 subsection.

29 (ii) Notwithstanding any other provision of law, if an electing
30 small business corporation files in the form and manner as specified in
31 subdivision (h)(i) of this subsection, the deadline for filing a claim

1 for credit or refund prescribed in section 77-2793 shall be extended for
2 affected shareholders of the electing small business corporation until
3 the timeframe specified in section 77-2793 or January 31, 2026, whichever
4 is later. The resulting claim of refund for tax years beginning prior to
5 January 1, 2023, shall be submitted in the form and manner as prescribed
6 by the Tax Commissioner. Neither the electing small business corporation
7 nor its shareholders shall incur any penalties for late filing nor owe
8 interest on such amounts. The Tax Commissioner shall not be required to
9 pay interest on any amounts owed to the shareholders resulting from such
10 refund claims.

11 (iii) Notwithstanding the dates provided in subdivision (h)(i) of
12 this subsection, the Tax Commissioner shall have one year from the date
13 an electing small business corporation files in the form and manner as
14 specified in subdivision (h)(i) of this subsection to review and make a
15 written proposed deficiency determination in accordance with section
16 77-2786. Any notice of deficiency determination made as specified in this
17 subdivision may be enforced at any time within six years from the date of
18 the notice of deficiency determination.

19 (9) For purposes of this section:

20 (a) Electing small business corporation means, with respect to a
21 taxable period, an eligible small business corporation having an election
22 in effect under subchapter S of the Internal Revenue Code that has made
23 an election pursuant to subsection (8) of this section with respect to
24 such taxable period; and

25 (b) Eligible small business corporation means an entity subject to
26 taxation under subchapter S of the Internal Revenue Code and the
27 regulations thereunder.

28 (10) For purposes of this section, any shareholder or member of the
29 corporation or limited liability company that is a grantor trust of a
30 nonresident shall be disregarded and this section shall apply as though
31 the nonresident grantor was the shareholder or member.

1 Sec. 3. Section 77-2734.02, Revised Statutes Supplement, 2023, is
2 amended to read:

3 77-2734.02 (1) Except as provided in subsection (2) of this section,
4 a tax is hereby imposed on the taxable income of every corporate taxpayer
5 that is doing business in this state:

6 (a) For taxable years beginning or deemed to begin before January 1,
7 2013, at a rate equal to one hundred fifty and eight-tenths percent of
8 the primary rate imposed on individuals under section 77-2701.01 on the
9 first one hundred thousand dollars of taxable income and at the rate of
10 two hundred eleven percent of such rate on all taxable income in excess
11 of one hundred thousand dollars. The resultant rates shall be rounded to
12 the nearest one hundredth of one percent;

13 (b) For taxable years beginning or deemed to begin on or after
14 January 1, 2013, and before January 1, 2022, at a rate equal to 5.58
15 percent on the first one hundred thousand dollars of taxable income and
16 at the rate of 7.81 percent on all taxable income in excess of one
17 hundred thousand dollars;

18 (c) For taxable years beginning or deemed to begin on or after
19 January 1, 2022, and before January 1, 2023, at a rate equal to 5.58
20 percent on the first one hundred thousand dollars of taxable income and
21 at the rate of 7.50 percent on all taxable income in excess of one
22 hundred thousand dollars;

23 (d) For taxable years beginning or deemed to begin on or after
24 January 1, 2023, and before January 1, 2024, at a rate equal to 5.58
25 percent on the first one hundred thousand dollars of taxable income and
26 at the rate of 7.25 percent on all taxable income in excess of one
27 hundred thousand dollars;

28 (e) For taxable years beginning or deemed to begin on or after
29 January 1, 2024, and before January 1, 2025, at a rate equal to 5.58
30 percent on the first one hundred thousand dollars of taxable income and
31 at the rate of 5.84 percent on all taxable income in excess of one

1 hundred thousand dollars;

2 (f) For taxable years beginning or deemed to begin on or after
3 January 1, 2025, and before January 1, 2026, at the rate of 5.20 percent
4 on all taxable income;

5 (g) For taxable years beginning or deemed to begin on or after
6 January 1, 2026, and before January 1, 2027, at the rate of 4.55 percent
7 on all taxable income; and

8 (h) For taxable years beginning or deemed to begin on or after
9 January 1, 2027, at the rate of 3.99 percent on all taxable income.

10 For corporate taxpayers with a fiscal year that does not coincide
11 with the calendar year, the individual rate used for this subsection
12 shall be the rate in effect on the first day, or the day deemed to be the
13 first day, of the taxable year.

14 (2) An insurance company shall be subject to taxation at the lesser
15 of the rate described in subsection (1) of this section or the rate of
16 tax imposed by the state or country in which the insurance company is
17 domiciled if the insurance company can establish to the satisfaction of
18 the Tax Commissioner that it is domiciled in a state or country other
19 than Nebraska that imposes on Nebraska domiciled insurance companies a
20 retaliatory tax against the tax described in subsection (1) of this
21 section.

22 (3) For a corporate taxpayer that is subject to tax in another
23 state, its taxable income shall be the portion of the taxpayer's ~~federal~~
24 taxable income, as adjusted, that is determined to be connected with the
25 taxpayer's operations in this state pursuant to sections 77-2734.05 to
26 77-2734.15 and sections 12 to 17 of this act.

27 (4) Each corporate taxpayer shall file only one income tax return
28 for each taxable year.

29 Sec. 4. Section 77-2734.04, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 77-2734.04 As used in sections 77-2734.01 to 77-2734.15 and sections

1 12 to 17 of this act, unless the context otherwise requires:

2 (1) Annual average amortized loan balance means the total of the
3 ending monthly values in the tax year divided by the number of months in
4 the tax year;

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

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

13 (4) Borrower located in this state means:

14 (a) A borrower who is engaged in a trade or business in this state;
15 or

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

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

20 (6) Combined group means the group of all persons that must file a
21 combined return as required by section 12 of this act;

22 (7) Combined return means a tax return required to be filed for the
23 combined group containing information as provided in section 12 of this
24 act or required by the Tax Commissioner;

25 (8) ~~(6)~~ Commercial domicile means the principal place from which the
26 trade or business of the taxpayer is directed or managed;

27 (9) Common ownership means one or more corporations owning fifty
28 percent or more of another corporation;

29 (10) ~~(7)~~ Communications company means any entity that:

30 (a) Is:

31 (i) A telecommunications company as defined in section 86-119 that

1 provides a telecommunications service as defined in section 86-121 or
2 provides broadband, Internet, or video services as defined in section
3 86-593;

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

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

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

31 (11) ~~(8)~~ Compensation means wages, salaries, commissions, and any

1 other form of remuneration paid to employees for personal services;

2 (12) (9) Corporate taxpayer means a combined group of all
3 corporations, wherever incorporated, each of which would be a taxpayer
4 that must file a combined return, if the corporation were doing business
5 in this state. Corporate taxpayer also includes any corporation that must
6 file separately because such corporation is not a part of a unitary
7 business or the part of a unitary business, whether it is one or more
8 corporations, that is doing business in this state. Corporate taxpayer
9 does not include any corporation that has a valid election under
10 subchapter S of the Internal Revenue Code or any financial institution as
11 defined in section 77-3801;

12 (13) (10) Corporation means all corporations and all other entities
13 that are taxed as corporations under the Internal Revenue Code or that
14 would be taxed as corporations under the Internal Revenue Code if
15 independently subject to the taxing jurisdiction of the federal
16 government of the United States;

17 (14) (11) Credit card means a credit card, debit card, purchase
18 card, charge card, and travel or entertainment card;

19 (15) (12) Doing business in this state means the exercise of the
20 corporation's franchise in this state or the conduct of operations in
21 this state that exceed the limitations provided in 15 U.S.C. 381 on a
22 state imposing an income tax;

23 (16) (13) Federal taxable income means the corporate taxpayer's
24 federal taxable income as reported to the Internal Revenue Service or as
25 subsequently changed or amended, or, in the case of a member of a
26 combined group not incorporated in the United States, such member's
27 separate income or loss, as determined under section 13 of this act.

28 Except as provided in subsection (5) ~~or (6)~~ of section 77-2716, no
29 adjustment shall be allowed for a change from any election made or the
30 method used in computing federal taxable income; ~~An election to file a~~
31 ~~federal consolidated return shall not require the inclusion in any~~

1 ~~unitary group of a corporation that is not a part of the unitary~~
2 ~~business;~~

3 (17) ~~(14)~~ Intangible property means all personal property which is
4 not tangible personal property and includes, but is not limited to,
5 patents, copyrights, trademarks, trade names, service names, franchises,
6 licenses, royalties, processes, techniques, formulas, and technical know-
7 how but excludes money;

8 (18) ~~(15)~~ Loan means any extension of credit resulting from direct
9 negotiations between the taxpayer and its customer or the purchase, in
10 whole or in part, of an extension of credit from another person. Loan
11 includes participations, syndications, and leases treated as loans for
12 federal income tax purposes. Loan does not include properties treated as
13 loans under section 595 of the Internal Revenue Code prior to its repeal
14 by Public Law 104-188, futures or forward contracts, options, notional
15 principal contracts such as swaps, credit card receivables, including
16 purchased credit card relationships, noninterest bearing balances due
17 from depository institutions, cash items in the process of collection,
18 federal funds sold, securities purchased under agreements to resell,
19 assets held in a trading account, securities, interests in a real estate
20 mortgage investment conduit or other mortgage-backed or asset-backed
21 security, and other similar items;

22 (19) ~~(16)~~ Loan secured by real property means a loan or other
23 obligation which, at the time the original loan or obligation was
24 incurred or during the current taxable year, was secured by real
25 property. A loan secured by real property includes an installment sales
26 contract for real property;

27 (20) ~~(17)~~ Loan secured by tangible personal property means a loan or
28 other obligation which, at the time the original loan or obligation was
29 incurred or during the current taxable year, was secured by tangible
30 personal property. A loan secured by tangible personal property includes
31 an installment sales contract for tangible personal property;

1 ~~(21) (18)~~ Loan servicing fee includes (a) fees or charges for
2 originating and processing loan applications, including, but not limited
3 to, prepaid interest and loan discounts, (b) fees or charges for
4 collecting, tracking, and accounting for loan payments received, and (c)
5 gross receipts from the sale of loan servicing rights;

6 ~~(22) (19)~~ Participation means an extension of credit in which an
7 undivided ownership interest is held on a pro rata basis in a single loan
8 or pool of loans and related collateral;

9 (23) Partnership means any entity treated as a partnership for tax
10 purposes under the laws of this state;

11 (24) Person means any individual, firm, partnership, limited
12 liability company, association, corporation, company, syndicate, estate,
13 trust, trustee, receiver, executor, administrator, assignee,
14 organization, or entity;

15 ~~(25) (20)~~ Sales means all gross receipts of the taxpayer, except:

16 (a) Income from discharge of indebtedness;

17 (b) Amounts received from hedging transactions involving intangible
18 assets; or

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

20 ~~(21) Single economic unit means a business in which there is a~~
21 ~~sharing or exchange of value between the parts of the unit. A sharing or~~
22 ~~exchange of value occurs when the parts of the business are linked by (a)~~
23 ~~common management or (b) common operational resources that produce~~
24 ~~material (i) economies of scale, (ii) transfers of value, or (iii) flow~~
25 ~~of goods, capital, or services between the parts of the unit.~~

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

30 ~~(B) For the purposes of this subdivision, common operational~~
31 ~~resources includes, but is not limited to, centralization of any of the~~

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

4 (26) ~~(22)~~ State means any state of the United States, the District
5 of Columbia, the Commonwealth of Puerto Rico, any territory or possession
6 of the United States, and any foreign country or political subdivision
7 thereof;

8 (27) ~~(23)~~ Subject to the Internal Revenue Code means a corporation
9 that meets the requirements of section 243 of the Internal Revenue Code
10 in order for its distributions to qualify for the dividends-received
11 deduction;

12 (28) ~~(24)~~ Taxable income means worldwide federal taxable income as
13 adjusted and, if appropriate, as apportioned, ~~or, in the case of a member~~
14 ~~of a combined group not incorporated in the United States, such member's~~
15 separate income or loss, as determined under section 13 of this act;

16 (29) ~~(25)~~ Taxable year means the period the corporate taxpayer used
17 on its federal income tax return;

18 (30) Taxpayer means any person subject to the income tax imposed by
19 section 77-2734.02;

20 (31) ~~(26)~~ Treasury function is the pooling, management, and
21 investment of intangible assets to satisfy the cash-flow needs of the
22 trade or business, including, but not limited to, providing liquidity for
23 a taxpayer's business cycle, providing a reserve for business
24 contingencies, or business acquisitions. A taxpayer principally engaged
25 in the trade or business of purchasing and selling intangible assets of
26 the type typically held in a taxpayer's treasury function, such as a
27 registered broker-dealer, is not performing a treasury function with
28 respect to income so produced;

29 (32) ~~(27)~~ Unitary business means a single economic enterprise made
30 up either of separate parts of a single business entity or of a commonly
31 controlled group of business entities that are sufficiently

1 interdependent, integrated, and interrelated through the activities of
2 such parts or entities so as to provide a synergy and mutual benefit that
3 produces a sharing or exchange of value among the parts or entities and a
4 significant flow of value to the separate parts or entities. Unitary
5 business includes any part of a business that meets the definition of
6 unitary business and is conducted by a person through the person's
7 interest in a partnership, whether the interest in that partnership is
8 held directly or indirectly through a series of partnerships or other
9 pass-through entities; a business that is conducted as a single economic
10 unit by one or more corporations with common ownership and shall include
11 all activities in different lines of business that contribute to the
12 single economic unit.

13 ~~For the purposes of this subdivision, common ownership means one or~~
14 ~~more corporations owning fifty percent or more of another corporation;~~
15 ~~and~~

16 (33) ~~(28)~~ Unitary group means the group of separate parts of a
17 single business entity or of a commonly controlled group of business
18 entities corporations that are conducting a unitary business; and -

19 (34) Worldwide taxable income means a corporate taxpayer's state
20 taxable net income as calculated under section 13 of this act. No
21 adjustment to worldwide taxable income shall be allowed for a change from
22 any election made or the method used in computing federal taxable income.

23 Sec. 5. Section 77-2734.05, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 77-2734.05 (1) Except as provided in subsection (1) of section
26 77-4105, unitary business having income from business activity that is
27 taxable both within and without this state shall, for taxable years
28 beginning or deemed to begin before January 1, 1988, determine its
29 taxable income by multiplying its federal taxable income, as adjusted, by
30 a fraction, which is the average of the property factor plus the payroll
31 factor plus the sales factor. For taxable years beginning or deemed to

1 begin on or after January 1, 1988, the weight given to the property and
2 payroll factors in the average shall be reduced and the fraction shall be
3 determined as provided in section 77-2734.16. For taxable years beginning
4 or deemed to begin on or after January 1, 1992, but before January 1,
5 2026, federal taxable income, as adjusted, shall be multiplied by the
6 sales factor only.

7 (2) Except as provided in subsection (1) of section 77-4105, unitary
8 business having income from business activity that is taxable both within
9 and without this state shall, for taxable years beginning or deemed to
10 begin on or after January 1, 2026, determine its taxable income by
11 multiplying its worldwide taxable income, as adjusted, by a fraction,
12 which is the sales factor.

13 (3) (2) If a corporate taxpayer unitary business does not have any
14 property, payroll, or sales anywhere, then the average in subsection (1)
15 of this section shall be the average of the remaining factors.

16 (4) For taxable years beginning or deemed to begin before January 1,
17 2026, in (3) In the computation of the factors only the part of a unitary
18 group that is subject to the Internal Revenue Code shall be included,
19 except as provided in section 77-2734.09 as such section existed prior to
20 amendment by this legislative bill.

21 Sec. 6. Section 77-2734.06, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 77-2734.06 (1) The entire worldwide federal taxable income of a
24 corporate taxpayer unitary business operating both within and without
25 this state is presumed to be subject to apportionment. Other than for
26 adjustments required to be made under the Nebraska Revenue Act of 1967,
27 for any income that is claimed to be not subject to apportionment, a
28 taxpayer needs to show by a preponderance of the evidence (a) that the
29 income is not a part of the unitary business and (b) that the taxpayer
30 has not claimed the same income is part of the unitary business and
31 subject to apportionment in another state with substantially the same law

1 on apportionability of income.

2 (2) There shall be subtracted from worldwide federal taxable income
3 any income that the corporate taxpayer has shown is not subject to
4 apportionment under subsection (1) of this section. The amount subtracted
5 under this section shall be reduced, but not below zero, by a portion of
6 the interest expense as determined under subsection (3) of this section
7 and any expense incurred in the production of the income described in
8 this section.

9 (3) The interest expense for the reduction required in subsection
10 (2) of this section shall be determined by dividing the corporate
11 taxpayer's average investment in the activities producing the income by
12 the corporate taxpayer's average total assets and multiplying such ratio
13 by the total interest deduction allowed in the computation of worldwide
14 federal taxable income.

15 (4) For the purposes of this section, investment in activities
16 producing the income described in this section shall mean the tax basis
17 of the assets, both tangible and intangible, that are used in the
18 activities or are the basis of the receipt of the described income.

19 (5) Whenever it is necessary to properly reflect the ratio of
20 investment in the activities to total assets, the Tax Commissioner may
21 permit or require the computation of the average provided for in
22 subsection (3) of this section using amounts from interim balance sheets.

23 (6) The corporate taxpayer corporation may use, in lieu of the tax
24 basis for the computation in subsection (3) of this section, the amounts
25 from a balance sheet included with the combined federal return or as
26 required to be reported to federal or state regulatory agencies if (a)
27 such amounts are not materially different from tax basis, (b) the amounts
28 are prepared consistently from year to year, and (c) absent a change in
29 circumstances, the amounts are consistently used by the corporate
30 taxpayer corporation from year to year. The Tax Commissioner may require
31 a corporate taxpayer corporation to use the alternative amounts in order

1 to maintain consistency or may require the corporate taxpayer corporation
2 to show that the amounts used do not materially differ from the tax
3 basis.

4 Sec. 7. Section 77-2734.07, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 77-2734.07 (1) There shall be added to worldwide federal taxable
7 income the amount of any federal deduction because of a carryforward of a
8 net operating loss or any capital loss.

9 (2) There shall be allowed a deduction for a carryforward of a net
10 operating loss or capital loss that is connected with operations in
11 Nebraska. For a net operating loss or capital loss incurred in taxable
12 years beginning or deemed to begin on or after January 1, 1987, and
13 before January 1, 2014, the deduction shall be allowed only for each of
14 the five taxable years succeeding the year of the loss. For a net
15 operating loss incurred in taxable years beginning or deemed to begin on
16 or after January 1, 2014, the deduction shall be allowed only for each of
17 the twenty taxable years succeeding the year of the loss. For a capital
18 loss incurred in taxable years beginning or deemed to begin on or after
19 January 1, 2014, the deduction shall be allowed only for each of the five
20 taxable years succeeding the year of the loss.

21 (3) Except as otherwise provided in this section, there shall be
22 allowed a carryback of a net operating loss or a capital loss that is
23 connected with operations in Nebraska. For a net operating loss or
24 capital loss incurred in taxable years beginning or deemed to begin on or
25 after January 1, 1987, no such carryback shall be allowed.

26 (4) The amounts in subsections (2) and (3) of this section shall be
27 computed pursuant to rules and regulations adopted and promulgated by the
28 Tax Commissioner. Such regulations shall be in accord with the laws of
29 the United States regarding carryforwards and carrybacks.

30 (5) The provisions regarding capital losses and net operating losses
31 realized by members of a combined group in subdivision (5) and (7) of

1 section 13 of this act shall apply to this section.

2 Sec. 8. Section 77-2734.08, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 77-2734.08 (1) This section applies only for taxable years beginning
5 or deemed to begin before January 1, 2026.

6 (2) When the corporate taxpayer is a group of corporations that does
7 not file a consolidated federal return, the sum of each corporation's
8 federal taxable income shall be used to determine taxable income.

9 (3) ~~(2)~~ The sum of the federal taxable income of the group of
10 corporations shall be adjusted to eliminate intercompany transactions.

11 (4) ~~(3)~~ If the group of corporations includes a domestic
12 international sales corporation or other entity accorded similar
13 treatment under the Internal Revenue Code, the income of the group shall
14 include only that portion of the domestic international sales
15 corporation's income that is considered to be a dividend to the parent.

16 (a) The sales to the domestic international sales corporation shall
17 be eliminated.

18 (b) The domestic international sales corporation's property,
19 payroll, and sales shall be included in the factors to the extent of the
20 ownership of the rest of the group.

21 (c) There shall be no adjustment to the factors when the deferred
22 income is realized by the parent.

23 Sec. 9. Section 77-2734.09, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 77-2734.09 (1) Every member of a unitary group is required to be
26 included in the group's combined return, with group apportionment
27 calculated using the formula prescribed by section 13 of this act.

28 (2) The Tax Commissioner may prescribe required methods for applying
29 the formula prescribed by section 13 of this act to the operations of any
30 member that, had it not been a member of a unitary group, would have been
31 required or permitted to use a special apportionment formula. The guiding

1 principle for any such rules and regulations shall be production of an
2 apportionment calculation that contributes to the fair representation of
3 the entire unitary group's business activity in Nebraska.

4 ~~Any member of a unitary group that is required or permitted to use~~
5 ~~an apportionment formula other than one prescribed by section 77-2734.05~~
6 ~~shall be included in a return only with other corporations using the same~~
7 ~~apportionment formula. The income and the factors of such corporation~~
8 ~~shall not be used in computing the taxable income of the rest of the~~
9 ~~unitary group that does not use such special formula. A corporation using~~
10 ~~a formula required by a regulation issued pursuant to subsection (3) of~~
11 ~~section 77-2734.15 is using a formula prescribed by section 77-2734.05.~~

12 Sec. 10. Section 77-2734.10, Reissue Revised Statutes of Nebraska,
13 is amended to read:

14 77-2734.10 The factors computed pursuant to sections 77-2734.05 to
15 77-2734.15 and sections 12 to 17 of this act shall be adjusted in the
16 following situations:

17 (1) The sales factor shall include the income from intangibles such
18 as interest, royalties, or dividends and the net income from gains on the
19 sale of intangibles;

20 (2) Except as provided in subdivision (1) of this section, the
21 factors shall not include in the denominator any amount that cannot be
22 assigned to a numerator because of the inability to reasonably identify
23 the location of an income-producing activity;

24 (3) The factors shall not include any amount that was eliminated as
25 an intercompany transaction;

26 (4) The factors shall not include any property, payroll, or sales
27 that are a part of the production of income that is not subject to
28 apportionment;

29 (5) The property factor shall include the intangible drilling costs
30 incurred on property that is owned or rented and used during the tax
31 period; and

1 (6) The property factor of a corporation or unitary business engaged
2 in the exploration and extraction of natural resources shall include
3 undeveloped mineral leases and royalty payments on producing leases,
4 except that those mineral leases determined not suitable for production
5 shall not be included in the property factor.

6 Sec. 11. Section 77-2734.15, Reissue Revised Statutes of Nebraska,
7 is amended to read:

8 77-2734.15 (1) If the apportionment provisions contained in sections
9 77-2734.01 to 77-2734.14 and sections 12 to 17 of this act do not fairly
10 represent the taxable income that is reasonably attributable to the
11 business operations conducted within this state, the corporate taxpayer
12 that is not a member of a unitary group may petition for or the Tax
13 Commissioner may require, in respect to all or any part of the worldwide
14 ~~federal~~ taxable income, if reasonable:

15 (a) The inclusion of one or more additional factors which will
16 fairly represent the taxpayer's taxable income in this state;

17 (b) The exclusion of any one or more factors;

18 (c) Separate accounting; or

19 (d) The employment of any other method to effectuate an equitable
20 apportionment of the taxpayer's income.

21 (2) Subsection (1) of this section is intended to apply only in
22 unique and nonrecurring factual situations which would otherwise produce
23 incongruous results under the normal apportionment formula.

24 (3) The Tax Commissioner may adopt and promulgate rules and
25 regulations for appropriate procedures for the computation of the
26 property, payroll, and sales factors of the apportionment formula for
27 certain industries when necessary to retain uniformity with the taxation
28 methods of other states or when the characteristics of the industry are
29 such that the normal computation methods are not appropriate. Such
30 industries shall include, but are not limited to, transportation,
31 broadcast communications, and insurance.

1 (4) If the Tax Commissioner fails to mail a notice of final action
2 on any petition under ~~the provisions of~~ this section within thirty days
3 after the filing of such petition, the taxpayer may, prior to notice of
4 action on the petition, consider the petition denied.

5 (5) Nothing in this section shall supersede section 77-2734.09.

6 Sec. 12. (1) Except as provided in section 16 of this act, any
7 person, including any corporation wherever incorporated or domiciled,
8 that is a member of a unitary business shall file a combined return as a
9 combined group. Such return shall include the income and apportionment
10 factors, as determined under sections 14 and 16 of this act, and other
11 information required by the Tax Commissioner for all members of the
12 combined group wherever located or doing business. The combined return
13 must be filed under the name and federal employer identification number
14 of the parent corporation if the parent is a member of the combined
15 group. If there is no parent corporation or if the parent is not a group
16 member, the members of the combined group shall choose a member to file
17 the return. The filing member shall remain the same in subsequent years
18 unless the filing member is no longer the parent corporation or is no
19 longer a member of the combined group. The return shall be signed by a
20 responsible officer of the filing member on behalf of the members of the
21 combined group. Members of the combined group are jointly and severally
22 liable for the tax liability of the combined group included in the
23 combined return.

24 (2) The Tax Commissioner may require that a combined return include
25 the income and associated apportionment factors of persons that are not
26 included in such return under subsection (1) of this section, but that
27 are members of a unitary business, in order to reflect proper
28 apportionment of income of the entire unitary business. Authority to
29 require combination under this subdivision includes the authority to
30 require combination of the income and associated apportionment factors of
31 persons that are not subject to the income tax imposed by section

1 77-2734.02 or would not be subject to such tax if doing business in the
2 state.

3 (3) If the Tax Commissioner determines that the reported income or
4 loss of a taxpayer engaged in a unitary business with a person not
5 included in the combined return of the taxpayer under subsection (1) of
6 this section represents an avoidance or evasion of tax by such taxpayer,
7 the Tax Commissioner may, on a case-by-case basis, require all or part of
8 the income and associated apportionment factors of such person be
9 included in the taxpayer's combined return.

10 (4) With respect to the inclusion of associated apportionment
11 factors pursuant to subsection (2) of this section, the Tax Commissioner
12 may require the exclusion or the inclusion of one or more additional
13 factors that will fairly represent the taxpayer's business activity in
14 this state or the employment of any other method to effectuate a proper
15 reflection of the total amount of income subject to apportionment and an
16 equitable allocation and apportionment of the taxpayer's income.

17 Sec. 13. A combined group's state taxable net income shall be
18 calculated as follows:

19 (1) First, the separate income or loss of each member of the
20 combined group, before net operating loss deduction, is determined as
21 follows:

22 (a) For any member incorporated in the United States or included in
23 a consolidated federal corporate income tax return, the member's income
24 or loss is the taxable income for the member under the Internal Revenue
25 Code of 1986, as amended, on a separate entity basis, after making
26 appropriate adjustments under sections 77-2716, 77-2734.07, and
27 77-2734.08; and

28 (b)(i) For any member not included under subdivision (1)(a) of this
29 section, the member's income or loss is determined from a profit and loss
30 statement prepared for that member on a separate entity basis in the
31 currency in which its books of account are regularly maintained, if this

1 profit and loss statement is subject to an independent audit, adjusted to
2 conform it to the accounting principles generally accepted in the United
3 States for the preparation of such statements and further modified to
4 take into account any book tax adjustments necessary to reflect federal
5 and Nebraska tax law. Income or loss so computed includes all income
6 wherever derived and is not limited to items of income sourced in the
7 United States or effectively connected income within the meaning of the
8 Internal Revenue Code of 1986, as amended. Items of income, expense,
9 gain, or loss and related apportionment factors that are denominated in a
10 foreign currency must also be translated into United States dollar
11 amounts on a reasonable basis consistently applied year-to-year and
12 entity-by-entity. Unrealized foreign currency gains and losses are not
13 recognized. Income apportioned to this state is to be expressed in United
14 States dollars.

15 (ii) In lieu of the procedures set forth in subdivision (1)(b)(i) of
16 this section or in any case where it is necessary to fairly and
17 consistently reflect the income or loss and apportionment factors of
18 foreign operations included in the unitary business, the Tax Commissioner
19 may provide for other procedures to reasonably approximate the income or
20 loss and apportionment factors of members with foreign operations;

21 (2)(a) Second, except as otherwise provided in sections 77-2734.05
22 to 77-2734.15 and sections 12 to 17 of this act or by rule or regulation,
23 the separate income or loss of the members, as determined under
24 subdivision (1) of this section, are combined, eliminating items of
25 income, expense, gain, and loss from transactions between members of the
26 combined group, applying the consolidated filing rules under the Internal
27 Revenue Code of 1986, as amended, and any applicable regulations as if
28 the combined group was a consolidated filing group.

29 (b) Dividends paid by one member of the combined group to another
30 member are excluded from that member's income to the extent those
31 dividends are paid out of the earnings and profits of the unitary

1 business included in the combined return in the current or an earlier
2 year.

3 (c) A charitable expense incurred by a member of a combined group,
4 to the extent allowable as a deduction pursuant to section 170 of the
5 Internal Revenue Code of 1986, as amended, is subtracted first from the
6 combined group's apportionable income subject to the income limitations
7 of such section applied to the entire apportionable income of the group,
8 and any excess may be carried over as provided in such section, subject
9 to limitations in such section;

10 (3) Third, the combined group's ordinary apportionable income or
11 loss is determined by eliminating the following amounts from combined
12 income or loss of the members determined in subdivision (2) of this
13 section:

14 (a) Any net capital gain resulting from application of subchapter P
15 of the Internal Revenue Code of 1986, as amended; and

16 (b) Any other income or loss, or item of income, expense, gain, or
17 loss, that is nonapportionable;

18 (4) Fourth, the combined group's state share of ordinary
19 apportionable income or loss is determined by multiplying the ordinary
20 apportionable income or loss, as determined under subdivision (3) of this
21 section, by the combined group's apportionment factor, as determined
22 under section 15 of this act;

23 (5) Fifth, the combined group's state net capital gain or loss, and
24 the amount of any state net capital loss carryover, is determined from
25 the application of subchapter P of the Internal Revenue Code of 1986, as
26 amended, as follows:

27 (a) Each separate item of capital gain or loss for the combined
28 group is determined following subchapter P of the Internal Revenue Code
29 of 1986, as amended;

30 (b) Each separate item of apportionable capital gain or loss is then
31 apportioned using the combined group's apportionment factor, as

1 determined under section 12 of this act, and each separate item of
2 nonapportionable capital gain or loss is allocated under sections
3 77-2734.05 to 77-2734.15 and sections 12 to 17 of this act;

4 (c) The capital gains or losses allocated or apportioned to this
5 state are then combined consistent with subchapter P of the Internal
6 Revenue Code of 1986, as amended;

7 (d) If the amount determined in subdivision (5)(c) of this section
8 is a net capital gain, that gain is included in the combined group's
9 state taxable net income or loss before net operating loss deduction, as
10 determined under subdivision (6) of this section;

11 (e) If the amount determined in subdivision (5)(c) of this section
12 is a net capital loss, that loss may not be deducted from other income
13 but may be carried over by the combined group and used to offset capital
14 gains of the combined group but only to the extent that the amount or use
15 of such capital loss carryover is not subject to limitations under any
16 provision of the Internal Revenue Code of 1986, as amended, or applicable
17 federal rules or regulations, or would not be subject to such limitations
18 if the combined group was the consolidated group; and

19 (f) If the capital loss carryover of the combined group must be
20 attributed to particular members of the group for purposes of determining
21 limitations applicable to the amount or use of the capital loss under
22 subdivision (5)(e) of this section, then the attribution shall be done by
23 multiplying the combined group's net capital loss generated for any
24 applicable year times a fraction, the numerator of which is the separate
25 entity net capital loss of the member for that year, if any, and the
26 denominator of which is the total separate entity net capital losses for
27 all the members of the combined group that had net capital losses for
28 that year. A member's separate entity net capital loss carryover will be
29 determined as follows:

30 (i) For each year in which the combined group recognized a net
31 capital loss, multiply the combined group's net apportionable gains and

1 losses by the member's separate entity apportionment factor, as
2 determined under section 15 of this act, combining the resulting
3 apportioned gains and losses as provided in subdivision (5) of this
4 section, adding any nonapportionable gains, and subtracting any losses
5 allocated to the state that were generated by that member;

6 (ii) In no case may members of the combined group be attributed
7 total capital losses under this subdivision (5)(f) in excess of the
8 combined group's net capital loss properly reported to this state in the
9 tax year; and

10 (iii) In computing the net capital loss carryover for the member of
11 the combined group, the separate entity capital losses for all members
12 computed under this subdivision (5)(f) shall be deemed to be used to
13 offset capital gains of the combined group in other years on a pro rata
14 basis, starting with the earliest year;

15 (6) Sixth, the combined group's state net income or loss is
16 determined by combining:

17 (a) The combined group's state share of ordinary apportionable
18 income or loss, as determined under subdivision (4) of this section;

19 (b) Any net capital gain, as determined under subdivision (5)(c) of
20 this section; and

21 (c) The amount of any nonapportionable items of income, expense,
22 gain, or loss of the combined group not allocated under subdivision (5)
23 (b) of this section that are allocable to the state under sections
24 77-2734.05 to 77-2734.15 and sections 12 to 17 of this act; and

25 (7)(a) Seventh, the combined group's state taxable net income is
26 determined by deducting from the amount of the combined group's state net
27 income, as determined under subdivision (6) of this section, an allowable
28 amount of the combined group's net operating loss carryover. Such
29 allowable amount is determined for a taxable year as follows:

30 (i) The total of the combined group's state net losses, as
31 determined under this subdivision (6), for prior years, to the extent

1 such losses have not been used to offset the combined group's state net
2 income and to the extent those losses are not otherwise limited by this
3 subdivision (7), is combined with the net operating loss carryover of any
4 members of the combined group created before the member became a part of
5 the combined group, but only to the extent that the net operating loss
6 carryover:

7 (A) Represents net operating losses that were properly attributed to
8 the member under subdivision (7)(b) of this section if the member was
9 part of a separate combined group when the losses were created;

10 (B) Represents net operating losses properly allocated or
11 apportioned to this state in the year the losses were created;

12 (C) Has not been used to offset income of any taxpayer; and

13 (D) Would not be subject to limitations as to the amount or use
14 applicable under any provision of the Internal Revenue Code of 1986, as
15 amended, or any federal rules or regulations, or would not be subject to
16 such limitations applied if the combined group was the consolidated
17 group; and

18 (ii) The net operating loss carryover of a member of the combined
19 group attributed to such member under subdivision (7)(b) of this section,
20 that has not been used to offset income as of the date such member is no
21 longer part of the combined group, is subtracted from the amount
22 determined under subdivision (7)(a)(i) of this section.

23 (b) If the combined group's net operating loss carryover must be
24 attributed to particular members of the group for purposes of determining
25 limitations applicable to the amount or use of the net operating loss
26 carryover under this subdivision (7), then the attribution will be done
27 by multiplying the combined group's net loss generated for any applicable
28 year by a fraction, the numerator of which is the separate entity net
29 loss of the member for that year, if any, and the denominator of which is
30 the total separate entity net losses for all the members of the combined
31 group that had net losses for that year. A member's separate entity net

1 loss will be determined as follows:

2 (i) The amount of the combined group's ordinary apportionable
3 income, as determined under subdivision (3) of this section, is
4 multiplied by the member's separate entity apportionment factor, as
5 determined under section 15 of this act;

6 (ii) The amount of the combined group's state net capital gain, as
7 determined under subdivision (5) of this section, multiplied by the
8 member's separate entity apportionment factor, as determined under
9 section 15 of this act, is combined with the amount determined under
10 subdivision (7)(b)(i) of this section;

11 (iii) The amount of any nonapportionable items of income, expense,
12 gain, or loss of the combined group generated by the member not allocated
13 under subdivision (5)(b) of this section that are allocable to the state
14 under sections 77-2734.05 to 77-2734.15 and sections 12 to 17 of this act
15 is combined with the amount determined under subdivision (7)(b)(ii) of
16 this section; and

17 (iv) Any adjustments to properly reflect the member's separate
18 entity loss are made to the amount determined under subdivision (7)(b)
19 (iii) of this section.

20 (c) In no case shall members be attributed total losses under
21 subdivision (7)(b) of this section in excess of the combined group loss
22 properly reported to this state in the tax year.

23 (d) In determining the net operating loss carryover for the member
24 of the combined group, the separate entity net operating losses for all
25 members will be deemed to be used to offset the combined group's net
26 income in other years, on a pro rata basis, starting with the earliest
27 year.

28 Sec. 14. If the use of any tax credit is limited to tax imposed by
29 the Nebraska Revenue Act of 1967 attributed to a member of a combined
30 group, then such tax that may be offset by the credit, the amount of
31 which is determined as follows:

1 (1) The amount of the combined group's ordinary apportionable
2 income, as determined under subdivision (3) of section 13 of this act, is
3 multiplied by the member's separate entity apportionment factor, as
4 determined under section 15 of this act;

5 (2) The amount of the combined group's state net capital gain, as
6 determined under subdivision (5) of section 13 of this act, multiplied by
7 the member's separate entity apportionment factor, as determined under
8 section 15 of this act, is combined with the amount determined under
9 subdivision (1) of this section;

10 (3) The amount of any nonapportionable items of income, expense,
11 gain, or loss of the combined group generated by the member not allocated
12 under subdivision (5)(b) of section 13 of this act that are allocable to
13 the state under sections 77-2734.05 to 77-2734.15 and sections 12 to 17
14 of this act is combined with the amount determined under subdivision (2)
15 of this section;

16 (4) Any adjustments to properly reflect the member's separate entity
17 loss are made to the amount determined under subdivision (3) of this
18 section; and

19 (5) The amount determined under subdivision (4) of this section is
20 multiplied by the applicable tax rate.

21 Sec. 15. (1) Except as provided in sections 12 to 17 of this act,
22 sections 77-2734.05 to 77-2734.15 determine how income or loss, or items
23 making up income or loss, are allocated and apportioned to this state for
24 a combined group.

25 (2) A combined group's apportionment factor is a percentage, the
26 numerator of which includes amounts sourced to the state for the combined
27 group's unitary business, regardless of the separate entity to which such
28 amounts may be attributed, and the denominator of which includes amounts
29 associated with the combined group's unitary business wherever located.

30 (3) The separate entity apportionment factor for a member of the
31 combined group is a percentage, the numerator of which includes income or

1 loss sourced to the state for the member, and the denominator of which
2 includes amounts associated with the combined group's unitary business
3 wherever located.

4 (4) If a member of the combined group holds a partnership interest
5 from which it derives apportionable income, the share of the
6 partnership's apportionment factor to be included in the apportionment
7 factor of the combined group is determined by multiplying the
8 partnership's separate entity apportionment factor by a fraction, the
9 numerator of which is the amount of the partnership's apportionable
10 income properly included in the member's income, whether received
11 directly or indirectly, and including any guaranteed payments, and the
12 denominator of which is the amount of the partnership's total
13 apportionable income. If a member of the combined group directly or
14 indirectly receives an allocation of a partnership tax item, such as an
15 item of loss or expense, so that it is not possible to determine the
16 member's share of apportionable income, the Tax Commissioner may provide
17 for the inclusion of particular partnership factors, or portions of
18 factors, in the combined group's factors.

19 Sec. 16. Beginning on January 1, 2026, all previously made
20 consolidated filing elections are terminated and all taxpayers must file
21 a combined return pursuant to section 12 of this act.

22 Sec. 17. The Tax Commissioner may adopt and promulgate rules and
23 regulations necessary to carry out sections 77-2734.05 to 77-2734.15 and
24 sections 12 to 17 of this act.

25 Sec. 18. This act becomes operative for all taxable years beginning
26 or deemed to begin on or after January 1, 2026.

27 Sec. 19. Original sections 77-2734.04, 77-2734.05, 77-2734.06,
28 77-2734.07, 77-2734.08, 77-2734.09, 77-2734.10, and 77-2734.15, Reissue
29 Revised Statutes of Nebraska, sections 77-2734.01 and 77-2734.02, Revised
30 Statutes Supplement, 2023, and section 77-2701, Revised Statutes
31 Supplement, 2023, as amended by Laws 2024, LB937, section 67, Laws 2024,

1 LB1023, section 8, and Laws 2024, LB1317, section 80, are repealed.