

AMENDMENTS TO LB 872

Introduced by Revenue

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

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

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

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

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

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

19           (4) Borrower located in this state means:

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

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

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

3           ~~(1)~~ (6) Commercial domicile shall mean means the  
4 principal place from which the trade or business of the taxpayer is  
5 directed or managed;

6           (7) Communications company means any entity that:

7           (a) Is:

8           (i) A telecommunications company as defined in section  
9 86-119 that provides a telecommunications service as defined in  
10 section 86-121 or provides broadband, Internet, or video services  
11 as defined in section 86-593;

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

1 delivered by providers of commercial mobile radio service, as  
2 defined in 47 C.F.R. 20.3; or

3 (iii) A broadcast company that provides an over-the-air  
4 broadcast radio station or over-the-air broadcast television  
5 station; and

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

15 ~~(2)~~ (8) Compensation shall mean means wages, salaries,  
16 commissions, and any other form of remuneration paid to employees  
17 for personal services;

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

25 ~~(4)~~ (10) Corporation shall mean means all corporations  
26 and all other entities that are taxed as corporations under the  
27 Internal Revenue Code;

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

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

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

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

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

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

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

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

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

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

1           ~~(7)~~ (20) Sales ~~shall mean~~ means all gross receipts of the  
2 taxpayer, ~~except:~~

3           (a) Income from discharge of indebtedness;

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

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

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

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

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

26           ~~(9)~~ (22) State ~~shall mean~~ means any state of the United  
27 States, the District of Columbia, the Commonwealth of Puerto Rico,

1 any territory or possession of the United States, and any foreign  
2 country or political subdivision thereof;

3 ~~(10)~~ (23) Subject to the Internal Revenue Code ~~shall mean~~  
4 means a corporation that meets the requirements of section 243 of  
5 the Internal Revenue Code in order for its distributions to qualify  
6 for the dividends-received deduction;

7 ~~(11)~~ (24) Taxable income ~~shall mean~~ means federal taxable  
8 income as adjusted and, if appropriate, as apportioned;

9 ~~(12)~~ (25) Taxable year ~~shall mean~~ means the period the  
10 corporate taxpayer used on its federal income tax return;

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

21 ~~(13)~~ (27) Unitary business ~~shall mean~~ means a business  
22 that is conducted as a single economic unit by one or more  
23 corporations with common ownership and shall include all activities  
24 in different lines of business that contribute to the single  
25 economic unit.

26 For the purposes of this subdivision, common ownership  
27 ~~shall mean~~ means one or more corporations owning fifty percent or

1 more of another corporation; and

2 ~~(14)~~ (28) Unitary group ~~shall mean~~ means the group of  
3 corporations that are conducting a unitary business.

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

6 77-2734.14 (1) The sales factor is a fraction, the  
7 numerator of which is the total sales of the taxpayer in this state  
8 during the tax period, and the denominator of which is the total  
9 sales everywhere during the tax period.

10 (2) Sales of tangible personal property in this state  
11 include:

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

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

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

27 (d) For all taxable years beginning or deemed to begin



1 on or after January 1, 1996, but before January 1, 1997, under  
2 the Internal Revenue Code of 1986, as amended, one-third of the  
3 property shipped from an office, store, warehouse, factory, or  
4 other place of storage in this state if the taxpayer is not taxable  
5 in the state of the purchaser.

6 (3) For sales other than sales of tangible personal  
7 property, except for sales as described in subsection (4) of this  
8 section:

9 (a) Sales of a service are in this state if the sales  
10 are derived from a buyer within this state. Sales of a service are  
11 derived from a buyer within this state if:

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

14 (ii) The service, when rendered, relates to tangible  
15 personal property located in this state at the time the service is  
16 received;

17 (iii) The service, when rendered, is provided to an  
18 individual physically present in this state at the time the service  
19 is received; or

20 (iv) The service, when rendered, is provided to a buyer  
21 engaged in a trade or business in this state and relates to  
22 that part of the trade or business then operated in this state.

23 For services described in this subdivision, if the buyer uses  
24 the service within and without this state, calculated using any  
25 reasonable method, the sales are apportioned between the use in  
26 this state in proportion to the use of the service in this state  
27 and the other states;

1           (b) Sales of an application service are in this state  
2 if the buyer uses the application service in this state. The  
3 application service is used in this state if, the buyer, from a  
4 location in this state:

5           (i) Uses it in the regular course of business in this  
6 state; or

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

9           If the buyer is not an individual and uses the  
10 application service within and without this state, calculated using  
11 any reasonable method, the sales are apportioned between the use  
12 in this state in proportion to the use of the application service  
13 in this state and the other states. If the location of a sale  
14 cannot be determined, the sale of an application service is in the  
15 state from which the order was placed in the regular course of the  
16 customer's business. If that office cannot be determined, the sales  
17 are considered received at the customer's billing address;

18           (c) Sales of intangible property are in this state if the  
19 buyer uses the intangible property at a location in this state.  
20 If the buyer uses the intangible property within and without this  
21 state, the sales are apportioned between this state in proportion  
22 to the use of the intangible property in this state and the other  
23 states. If the location of a sale cannot be determined, the sale of  
24 intangible property is in this state if the buyer's billing address  
25 is in this state;

26           (d) Interest, dividends, investment income, and other net  
27 gains from transactions in intangible assets held in connection

1 with a treasury function, other than net gains from the sale or  
2 redemption of marketable securities, are in this state to the  
3 extent that it is included in taxable income and to the extent the  
4 investment, management, and record-keeping activities associated  
5 with corporate investments occur in this state;

6 (e) Gross interest, fees, points, charges, and penalties  
7 from loans, net gains from the sale of loans, and loan servicing  
8 fees derived from loans owned by the taxpayer or another person,  
9 including servicing participations, secured by real property or  
10 tangible personal property are in this state if the property  
11 securing the loan is located in this state. If the real or  
12 tangible personal property securing the loan is located within  
13 and without this state, the gross interest, fees, points, charges,  
14 and penalties from loans, net gains from the sale of loans, and  
15 loan servicing fees derived from loans owned by the taxpayer or  
16 another person, including servicing participations, are based upon  
17 the ratio of the annual average amortized loan balance of a loan  
18 secured by the real property or tangible personal property located  
19 in this state to the annual average amortized loan balance of a  
20 loan secured by the real property or tangible personal property  
21 located within and without this state;

22 (f) Gross interest, fees, points, charges, and penalties  
23 from loans, net gains from the sale of loans, and loan servicing  
24 fees derived from loans owned by the taxpayer or another person,  
25 including servicing participations, that are not secured by real  
26 or tangible personal property are in this state if the borrower is  
27 located in this state, which location shall be presumed to be the

1 borrower's billing address;

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

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

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

12 (j) Gross receipts from the sale, lease, rental, or  
13 licensing of real property are in this state if the real property  
14 is located in this state; and

15 (k) Sales other than sales of tangible personal property  
16 not specifically addressed in this subsection must be sourced so as  
17 to fairly represent the extent of the taxpayer's business activity  
18 in this state. This requirement will be considered met in the  
19 following situations: (i) If the buyer is an individual, a sale is  
20 deemed to have occurred at the buyer's billing address; and (ii)  
21 if the buyer is not an individual and the sale is from an order  
22 placed in the regular course of the customer's business, the sale  
23 is deemed to have occurred in the state from which the order was  
24 placed and, if that place cannot be readily determined, the sale is  
25 deemed to have occurred at the customer's billing address.

26 (4) To continue the tax policy of this state which  
27 enhances the deployment of broadband in rural and underserved

1 areas of this state, sales, other than sales of tangible personal  
2 property, of a communications company are in this state if: (a)  
3 The income-producing activity is performed in this state; or (b)  
4 the income-producing activity is performed both in and outside this  
5 state and a greater proportion of the income-producing activity is  
6 performed in this state than in any other state, based on costs of  
7 performance.

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

10           ~~(a) The income-producing activity is performed in this~~  
11 ~~state; or~~

12           ~~(b) The income-producing activity is performed both~~  
13 ~~in and outside this state and a greater proportion of the~~  
14 ~~income-producing activity is performed in this state than in~~  
15 ~~any other state, based on costs of performance.~~

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

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