

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1440

03/11/2013 Authored by Hornstein
The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; corporate franchise; expanding the definition of domestic
1.3 corporations to include certain foreign corporations incorporated in or doing
1.4 business in tax havens; amending Minnesota Statutes 2012, sections 290.01,
1.5 subdivision 5, by adding a subdivision; 290.17, subdivision 4.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2012, section 290.01, subdivision 5, is amended to read:

1.8 Subd. 5. **Domestic corporation.** The term "domestic" when applied to a corporation
1.9 means a corporation:

1.10 (1) created or organized in the United States, or under the laws of the United States or
1.11 of any state, the District of Columbia, or any political subdivision of any of the foregoing
1.12 but not including the Commonwealth of Puerto Rico, or any possession of the United States;

1.13 (2) which qualifies as a DISC, as defined in section 992(a) of the Internal Revenue
1.14 Code; ~~or~~

1.15 (3) which qualifies as a FSC, as defined in section 922 of the Internal Revenue Code;

1.16 (4) which is incorporated in a tax haven;

1.17 (5) which is engaged in activity in a tax haven sufficient for the tax haven to impose a
1.18 net income tax under United States constitutional standards and section 290.015, and which
1.19 reports that 20 percent or more of its income is attributable to business in the tax haven; or

1.20 (6) which has the average of its property, payroll, and sales factors, as defined under
1.21 section 290.191, within the 50 states of the United States and the District of Columbia of
1.22 20 percent or more.

1.23 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
1.24 December 31, 2012.

2.1 Sec. 2. Minnesota Statutes 2012, section 290.01, is amended by adding a subdivision
2.2 to read:

2.3 Subd. 5c. **Tax haven.** (a) "Tax haven" means the following foreign jurisdictions,
2.4 unless the listing of the jurisdiction does not apply under paragraph (b):

- 2.5 (1) Anguilla;
- 2.6 (2) Antigua and Barbuda;
- 2.7 (3) Aruba;
- 2.8 (4) Bahamas;
- 2.9 (5) Bahrain;
- 2.10 (6) Belize;
- 2.11 (7) Bermuda;
- 2.12 (8) British Virgin Islands;
- 2.13 (9) Cayman Islands;
- 2.14 (10) Cook Islands;
- 2.15 (11) Costa Rica;
- 2.16 (12) Cyprus;
- 2.17 (13) Dominica;
- 2.18 (14) Gibraltar;
- 2.19 (15) Grenada;
- 2.20 (16) Guernsey-Sark-Alderney;
- 2.21 (17) Isle Mann;
- 2.22 (18) Jersey;
- 2.23 (19) Jordan;
- 2.24 (20) Lebanon;
- 2.25 (21) Liberia;
- 2.26 (22) Liechtenstein;
- 2.27 (23) Malta;
- 2.28 (24) Marshall Islands;
- 2.29 (25) Monaco;
- 2.30 (26) Nauru;
- 2.31 (27) Netherlands Antilles;
- 2.32 (28) Niue;
- 2.33 (29) Panama;
- 2.34 (30) St. Kitts and Nevis;
- 2.35 (31) St. Lucia;
- 2.36 (32) St. Vincent and Grenadines;

- 3.1 (33) Samoa;
 3.2 (34) Turks and Caicos; and
 3.3 (35) Vanuatu.

3.4 (b) A foreign jurisdiction's listing under paragraph (a) does not apply to the first
 3.5 taxable year after the United States enters into a tax treaty or other agreement with the
 3.6 foreign jurisdiction that provides for prompt, obligatory, and automatic exchange of
 3.7 information with the United States government relevant to enforcing the provisions of
 3.8 federal tax laws applicable to both individuals and all corporations and other entities and
 3.9 the treaty or other agreement was in effect for the taxable year.

3.10 **EFFECTIVE DATE.** This section is effective for returns filed for taxable years
 3.11 beginning after December 31, 2012.

3.12 Sec. 3. Minnesota Statutes 2012, section 290.17, subdivision 4, is amended to read:

3.13 Subd. 4. **Unitary business principle.** (a) If a trade or business conducted wholly
 3.14 within this state or partly within and partly without this state is part of a unitary business,
 3.15 the entire income of the unitary business is subject to apportionment pursuant to section
 3.16 290.191. Notwithstanding subdivision 2, paragraph (c), none of the income of a unitary
 3.17 business is considered to be derived from any particular source and none may be allocated
 3.18 to a particular place except as provided by the applicable apportionment formula. The
 3.19 provisions of this subdivision do not apply to business income subject to subdivision 5,
 3.20 income of an insurance company, or income of an investment company determined under
 3.21 section 290.36.

3.22 (b) The term "unitary business" means business activities or operations which
 3.23 result in a flow of value between them. The term may be applied within a single legal
 3.24 entity or between multiple entities and without regard to whether each entity is a sole
 3.25 proprietorship, a corporation, a partnership or a trust.

3.26 (c) Unity is presumed whenever there is unity of ownership, operation, and use,
 3.27 evidenced by centralized management or executive force, centralized purchasing,
 3.28 advertising, accounting, or other controlled interaction, but the absence of these
 3.29 centralized activities will not necessarily evidence a nonunitary business. Unity is also
 3.30 presumed when business activities or operations are of mutual benefit, dependent upon or
 3.31 contributory to one another, either individually or as a group.

3.32 (d) Where a business operation conducted in Minnesota is owned by a business
 3.33 entity that carries on business activity outside the state different in kind from that
 3.34 conducted within this state, and the other business is conducted entirely outside the state, it

4.1 is presumed that the two business operations are unitary in nature, interrelated, connected,
4.2 and interdependent unless it can be shown to the contrary.

4.3 (e) Unity of ownership is not deemed to exist when a corporation is involved unless
4.4 that corporation is a member of a group of two or more business entities and more than 50
4.5 percent of the voting stock of each member of the group is directly or indirectly owned
4.6 by a common owner or by common owners, either corporate or noncorporate, or by one
4.7 or more of the member corporations of the group. For this purpose, the term "voting
4.8 stock" shall include membership interests of mutual insurance holding companies formed
4.9 under section 66A.40.

4.10 (f) The net income and apportionment factors under section 290.191 or 290.20 of
4.11 foreign corporations and other foreign entities which are part of a unitary business shall
4.12 not be included in the net income or the apportionment factors of the unitary business.
4.13 A foreign corporation or other foreign entity which is required to file a return under this
4.14 chapter shall file on a separate return basis. The net income and apportionment factors
4.15 under section 290.191 or 290.20 of foreign operating corporations shall not be included in
4.16 the net income or the apportionment factors of the unitary business except as provided
4.17 in paragraph (g). The legislature intends that the provisions of this paragraph are not
4.18 severable from the provisions of section 290.01, subdivision 5, clauses (4) to (6), and if
4.19 any of those provisions are found to be unconstitutional, the provisions of this paragraph
4.20 are void for the respective taxable years.

4.21 (g) The adjusted net income of a foreign operating corporation shall be deemed to
4.22 be paid as a dividend on the last day of its taxable year to each shareholder thereof, in
4.23 proportion to each shareholder's ownership, with which such corporation is engaged in
4.24 a unitary business. Such deemed dividend shall be treated as a dividend under section
4.25 290.21, subdivision 4.

4.26 Dividends actually paid by a foreign operating corporation to a corporate shareholder
4.27 which is a member of the same unitary business as the foreign operating corporation shall
4.28 be eliminated from the net income of the unitary business in preparing a combined report
4.29 for the unitary business. The adjusted net income of a foreign operating corporation
4.30 shall be its net income adjusted as follows:

4.31 (1) any taxes paid or accrued to a foreign country, the commonwealth of Puerto
4.32 Rico, or a United States possession or political subdivision of any of the foregoing shall
4.33 be a deduction; and

4.34 (2) the subtraction from federal taxable income for payments received from foreign
4.35 corporations or foreign operating corporations under section 290.01, subdivision 19d,
4.36 clause (10), shall not be allowed.

5.1 If a foreign operating corporation incurs a net loss, neither income nor deduction from
5.2 that corporation shall be included in determining the net income of the unitary business.

5.3 (h) For purposes of determining the net income of a unitary business and the factors
5.4 to be used in the apportionment of net income pursuant to section 290.191 or 290.20, there
5.5 must be included only the income and apportionment factors of domestic corporations or
5.6 other domestic entities other than foreign operating corporations that are determined to
5.7 be part of the unitary business pursuant to this subdivision, notwithstanding that foreign
5.8 corporations or other foreign entities might be included in the unitary business.

5.9 (i) Deductions for expenses, interest, or taxes otherwise allowable under this chapter
5.10 that are connected with or allocable against dividends, deemed dividends described
5.11 in paragraph (g), or royalties, fees, or other like income described in section 290.01,
5.12 subdivision 19d, clause (10), shall not be disallowed.

5.13 (j) Each corporation or other entity, except a sole proprietorship, that is part of a
5.14 unitary business must file combined reports as the commissioner determines. On the
5.15 reports, all intercompany transactions between entities included pursuant to paragraph
5.16 (h) must be eliminated and the entire net income of the unitary business determined in
5.17 accordance with this subdivision is apportioned among the entities by using each entity's
5.18 Minnesota factors for apportionment purposes in the numerators of the apportionment
5.19 formula and the total factors for apportionment purposes of all entities included pursuant
5.20 to paragraph (h) in the denominators of the apportionment formula.

5.21 (k) If a corporation has been divested from a unitary business and is included in a
5.22 combined report for a fractional part of the common accounting period of the combined
5.23 report:

5.24 (1) its income includable in the combined report is its income incurred for that part
5.25 of the year determined by proration or separate accounting; and

5.26 (2) its sales, property, and payroll included in the apportionment formula must
5.27 be prorated or accounted for separately.

5.28 **EFFECTIVE DATE.** This section is effective for returns filed for taxable years
5.29 beginning after December 31, 2012.