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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 37

01/10/2013 Authored by Mullery
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 corporate franchise taxation; providing a throwback sales rule;
1.3 amending Minnesota Statutes 2012, sections 290.015, subdivision 1; 290.191,
1.4 subdivisions 5, 6.

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

1.6 Section 1. Minnesota Statutes 2012, section 290.015, subdivision 1, is amended to read:

1.7 Subdivision 1. **General rule.** (a) Except as provided in subdivision 3, a person
1.8 that conducts a trade or business that has a place of business in this state, regularly has
1.9 employees or independent contractors conducting business activities on its behalf in this
1.10 state, or owns or leases real property that is located in this state or tangible personal
1.11 property, including but not limited to mobile property, that is present in this state is subject
1.12 to the taxes imposed by this chapter.

1.13 (b) Except as provided in subdivision 3, a person that conducts a trade or business
1.14 not described in paragraph (a) is subject to the taxes imposed by this chapter if the trade
1.15 or business obtains or regularly solicits business from within this state, without regard
1.16 to physical presence in this state.

1.17 (c) For purposes of paragraph (b), business from within this state includes, but is
1.18 not limited to:

1.19 (1) sales of products or services of any kind or nature to customers in this state who
1.20 receive the product or service in this state;

1.21 (2) sales of services which are performed from outside this state but the services
1.22 are received in this state;

1.23 (3) transactions with customers in this state that involve intangible property and
1.24 result in receipts attributed to this state as provided in section 290.191, subdivision 5 or 6;

2.1 (4) leases of tangible personal property that is located in this state as defined in
 2.2 section 290.191, subdivision 5, paragraph ~~(g)~~ (f), or 6, paragraph (e); and

2.3 (5) sales and leases of real property located in this state.

2.4 (d) For purposes of paragraph (b), solicitation includes, but is not limited to:

2.5 (1) the distribution, by mail or otherwise, without regard to the state from which such
 2.6 distribution originated or in which the materials were prepared, of catalogs, periodicals,
 2.7 advertising flyers, or other written solicitations of business to customers in this state;

2.8 (2) display of advertisements on billboards or other outdoor advertising in this state;

2.9 (3) advertisements in newspapers published in this state;

2.10 (4) advertisements in trade journals or other periodicals, the circulation of which is
 2.11 primarily within this state;

2.12 (5) advertisements in a Minnesota edition of a national or regional publication or a
 2.13 limited regional edition of which this state is included of a broader regional or national
 2.14 publication which are not placed in other geographically defined editions of the same issue
 2.15 of the same publication;

2.16 (6) advertisements in regional or national publications in an edition which is not
 2.17 by its contents geographically targeted to Minnesota, but which is sold over the counter
 2.18 in Minnesota or by subscription to Minnesota residents;

2.19 (7) advertisements broadcast on a radio or television station located in Minnesota; or

2.20 (8) any other solicitation by telegraph, telephone, computer database, cable, optic,
 2.21 microwave, or other communication system.

2.22 Sec. 2. Minnesota Statutes 2012, section 290.191, subdivision 5, is amended to read:

2.23 Subd. 5. **Determination of sales factor.** For purposes of this section, the following
 2.24 rules apply in determining the sales factor.

2.25 (a) The sales factor includes all sales, gross earnings, or receipts received in the
 2.26 ordinary course of the business, except that the following types of income are not included
 2.27 in the sales factor:

2.28 (1) interest;

2.29 (2) dividends;

2.30 (3) sales of capital assets as defined in section 1221 of the Internal Revenue Code;

2.31 (4) sales of property used in the trade or business, except sales of leased property of
 2.32 a type which is regularly sold as well as leased;

2.33 (5) sales of debt instruments as defined in section 1275(a)(1) of the Internal Revenue
 2.34 Code or sales of stock; and

3.1 (6) royalties, fees, or other like income of a type which qualify for a subtraction from
3.2 federal taxable income under section 290.01, subdivision 19d, clause (10).

3.3 (b) Sales of tangible personal property are made within this state if:

3.4 (1) the property is received by a purchaser at a point within this state, and the
3.5 taxpayer is taxable in this state, regardless of the f.o.b. point, other conditions of the sale,
3.6 or the ultimate destination of the property; or

3.7 (2) the property is shipped from an office, store, warehouse, factory, or other place
3.8 of storage in this state and the purchaser is the United States government or the taxpayer is
3.9 not taxable in the state of the purchaser.

3.10 (c) Tangible personal property delivered to a common or contract carrier or foreign
3.11 vessel for delivery to a purchaser in another state or nation is a sale in that state or nation,
3.12 regardless of f.o.b. point or other conditions of the sale.

3.13 (d) Notwithstanding paragraphs (b) and (c), when intoxicating liquor, wine,
3.14 fermented malt beverages, cigarettes, or tobacco products are sold to a purchaser who is
3.15 licensed by a state or political subdivision to resell this property only within the state of
3.16 ultimate destination, the sale is made in that state.

3.17 ~~(e) Sales made by or through a corporation that is qualified as a domestic~~
3.18 ~~international sales corporation under section 992 of the Internal Revenue Code are not~~
3.19 ~~considered to have been made within this state.~~

3.20 ~~(f)~~ (e) Sales, rents, royalties, and other income in connection with real property is
3.21 attributed to the state in which the property is located.

3.22 ~~(g)~~ (f) Receipts from the lease or rental of tangible personal property, including
3.23 finance leases and true leases, must be attributed to this state if the property is located in
3.24 this state and to other states if the property is not located in this state. Receipts from the
3.25 lease or rental of moving property including, but not limited to, motor vehicles, rolling
3.26 stock, aircraft, vessels, or mobile equipment are included in the numerator of the receipts
3.27 factor to the extent that the property is used in this state. The extent of the use of moving
3.28 property is determined as follows:

3.29 (1) A motor vehicle is used wholly in the state in which it is registered.

3.30 (2) The extent that rolling stock is used in this state is determined by multiplying
3.31 the receipts from the lease or rental of the rolling stock by a fraction, the numerator of
3.32 which is the miles traveled within this state by the leased or rented rolling stock and the
3.33 denominator of which is the total miles traveled by the leased or rented rolling stock.

3.34 (3) The extent that an aircraft is used in this state is determined by multiplying the
3.35 receipts from the lease or rental of the aircraft by a fraction, the numerator of which is

4.1 the number of landings of the aircraft in this state and the denominator of which is the
4.2 total number of landings of the aircraft.

4.3 (4) The extent that a vessel, mobile equipment, or other mobile property is used in
4.4 the state is determined by multiplying the receipts from the lease or rental of the property
4.5 by a fraction, the numerator of which is the number of days during the taxable year the
4.6 property was in this state and the denominator of which is the total days in the taxable year.

4.7 ~~(h)~~ (g) Royalties and other income not described in paragraph (a), clause (6),
4.8 received for the use of or for the privilege of using intangible property, including patents,
4.9 know-how, formulas, designs, processes, patterns, copyrights, trade names, service names,
4.10 franchises, licenses, contracts, customer lists, or similar items, must be attributed to the
4.11 state in which the property is used by the purchaser. If the property is used in more
4.12 than one state, the royalties or other income must be apportioned to this state pro rata
4.13 according to the portion of use in this state. If the portion of use in this state cannot be
4.14 determined, the royalties or other income must be excluded from both the numerator
4.15 and the denominator. Intangible property is used in this state if the purchaser uses the
4.16 intangible property or the rights therein in the regular course of its business operations in
4.17 this state, regardless of the location of the purchaser's customers.

4.18 ~~(i)~~ (h) Sales of intangible property are made within the state in which the property
4.19 is used by the purchaser. If the property is used in more than one state, the sales must
4.20 be apportioned to this state pro rata according to the portion of use in this state. If the
4.21 portion of use in this state cannot be determined, the sale must be excluded from both the
4.22 numerator and the denominator of the sales factor. Intangible property is used in this
4.23 state if the purchaser used the intangible property in the regular course of its business
4.24 operations in this state.

4.25 ~~(j)~~ (i) Receipts from the performance of services must be attributed to the state where
4.26 the services are received. For the purposes of this section, receipts from the performance
4.27 of services provided to a corporation, partnership, or trust may only be attributed to a state
4.28 where it has a fixed place of doing business. If the state where the services are received is
4.29 not readily determinable or is a state where the corporation, partnership, or trust receiving
4.30 the service does not have a fixed place of doing business, the services shall be deemed
4.31 to be received at the location of the office of the customer from which the services were
4.32 ordered in the regular course of the customer's trade or business. If the ordering office
4.33 cannot be determined, the services shall be deemed to be received at the office of the
4.34 customer to which the services are billed. If the taxpayer is not taxable in the state of the
4.35 purchaser, the sale is attributable to this state if the greater proportion of the service is
4.36 performed in this state.

5.1 ~~(k)~~ (j) For the purposes of this subdivision and subdivision 6, paragraph (l), receipts
 5.2 from management, distribution, or administrative services performed by a corporation
 5.3 or trust for a fund of a corporation or trust regulated under United States Code, title 15,
 5.4 sections 80a-1 through 80a-64, must be attributed to the state where the shareholder of
 5.5 the fund resides. Under this paragraph, receipts for services attributed to shareholders are
 5.6 determined on the basis of the ratio of: (1) the average of the outstanding shares in the
 5.7 fund owned by shareholders residing within Minnesota at the beginning and end of each
 5.8 year; and (2) the average of the total number of outstanding shares in the fund at the
 5.9 beginning and end of each year. Residence of the shareholder, in the case of an individual,
 5.10 is determined by the mailing address furnished by the shareholder to the fund. Residence
 5.11 of the shareholder, when the shares are held by an insurance company as a depositor for
 5.12 the insurance company policyholders, is the mailing address of the policyholders. In
 5.13 the case of an insurance company holding the shares as a depositor for the insurance
 5.14 company policyholders, if the mailing address of the policyholders cannot be determined
 5.15 by the taxpayer, the receipts must be excluded from both the numerator and denominator.
 5.16 Residence of other shareholders is the mailing address of the shareholder.

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

5.19 Sec. 3. Minnesota Statutes 2012, section 290.191, subdivision 6, is amended to read:

5.20 Subd. 6. **Determination of receipts factor for financial institutions.** (a) For
 5.21 purposes of this section, the rules in this subdivision and subdivisions 5, paragraph ~~(k)~~ (j),
 5.22 and 8 apply in determining the receipts factor for financial institutions.

5.23 (b) "Receipts" for this purpose means gross income, including net taxable gain on
 5.24 disposition of assets, including securities and money market instruments, when derived
 5.25 from transactions and activities in the regular course of the taxpayer's trade or business.

5.26 (c) "Money market instruments" means federal funds sold and securities purchased
 5.27 under agreements to resell, commercial paper, banker's acceptances, and purchased
 5.28 certificates of deposit and similar instruments to the extent that the instruments are
 5.29 reflected as assets under generally accepted accounting principles.

5.30 (d) "Securities" means United States Treasury securities, obligations of United States
 5.31 government agencies and corporations, obligations of state and political subdivisions,
 5.32 corporate stock, bonds, and other securities, participations in securities backed by
 5.33 mortgages held by United States or state government agencies, loan-backed securities and
 5.34 similar investments to the extent the investments are reflected as assets under generally
 5.35 accepted accounting principles.

6.1 (e) Receipts from the lease or rental of real or tangible personal property, including
6.2 both finance leases and true leases, must be attributed to this state if the property is
6.3 located in this state. Receipts from the lease or rental of tangible personal property that is
6.4 characteristically moving property, including, but not limited to, motor vehicles, rolling
6.5 stock, aircraft, vessels, or mobile equipment are included in the numerator of the receipts
6.6 factor to the extent that the property is used in this state. The extent of the use of moving
6.7 property is determined as follows:

6.8 (1) A motor vehicle is used wholly in the state in which it is registered.

6.9 (2) The extent that rolling stock is used in this state is determined by multiplying
6.10 the receipts from the lease or rental of the rolling stock by a fraction, the numerator of
6.11 which is the miles traveled within this state by the leased or rented rolling stock and the
6.12 denominator of which is the total miles traveled by the leased or rented rolling stock.

6.13 (3) The extent that an aircraft is used in this state is determined by multiplying the
6.14 receipts from the lease or rental of the aircraft by a fraction, the numerator of which is
6.15 the number of landings of the aircraft in this state and the denominator of which is the
6.16 total number of landings of the aircraft.

6.17 (4) The extent that a vessel, mobile equipment, or other mobile property is used in
6.18 the state is determined by multiplying the receipts from the lease or rental of property by a
6.19 fraction, the numerator of which is the number of days during the taxable year the property
6.20 was in this state and the denominator of which is the total days in the taxable year.

6.21 (f) Interest income and other receipts from assets in the nature of loans that are
6.22 secured primarily by real estate or tangible personal property must be attributed to this state
6.23 if the security property is located in this state under the principles stated in paragraph (e).

6.24 (g) Interest income and other receipts from consumer loans not secured by real or
6.25 tangible personal property that are made to residents of this state, whether at a place
6.26 of business, by traveling loan officer, by mail, by telephone or other electronic means,
6.27 must be attributed to this state.

6.28 (h) Interest income and other receipts from commercial loans and installment
6.29 obligations that are unsecured by real or tangible personal property or secured by
6.30 intangible property must be attributed to this state if the proceeds of the loan are to be
6.31 applied in this state. If it cannot be determined where the funds are to be applied, the
6.32 income and receipts are attributed to the state in which the office of the borrower from
6.33 which the application would be made in the regular course of business is located. If this
6.34 cannot be determined, the transaction is disregarded in the apportionment formula.

6.35 (i) Interest income and other receipts from a participating financial institution's
6.36 portion of participation and syndication loans must be attributed under paragraphs (e) to

7.1 (h). A participation loan is an arrangement in which a lender makes a loan to a borrower
7.2 and then sells, assigns, or otherwise transfers all or a part of the loan to a purchasing
7.3 financial institution. A syndication loan is a loan transaction involving multiple financial
7.4 institutions in which all the lenders are named as parties to the loan documentation, are
7.5 known to the borrower, and have privity of contract with the borrower.

7.6 (j) Interest income and other receipts including service charges from financial
7.7 institution credit card and travel and entertainment credit card receivables and credit
7.8 card holders' fees must be attributed to the state to which the card charges and fees are
7.9 regularly billed.

7.10 (k) Merchant discount income derived from financial institution credit card holder
7.11 transactions with a merchant must be attributed to the state in which the merchant is
7.12 located. In the case of merchants located within and outside the state, only receipts from
7.13 merchant discounts attributable to sales made from locations within the state are attributed
7.14 to this state. It is presumed, subject to rebuttal, that the location of a merchant is the
7.15 address shown on the invoice submitted by the merchant to the taxpayer.

7.16 (l) Receipts from the performance of fiduciary and other services must be attributed
7.17 to the state in which the services are received. For the purposes of this section, services
7.18 provided to a corporation, partnership, or trust must be attributed to a state where it has a
7.19 fixed place of doing business. If the state where the services are received is not readily
7.20 determinable or is a state where the corporation, partnership, or trust does not have a fixed
7.21 place of doing business, the services shall be deemed to be received at the location of the
7.22 office of the customer from which the services were ordered in the regular course of the
7.23 customer's trade or business. If the ordering office cannot be determined, the services shall
7.24 be deemed to be received at the office of the customer to which the services are billed.

7.25 (m) Receipts from the issuance of travelers checks and money orders must be
7.26 attributed to the state in which the checks and money orders are purchased.

7.27 (n) Receipts from investments of a financial institution in securities and from money
7.28 market instruments must be apportioned to this state based on the ratio that total deposits
7.29 from this state, its residents, including any business with an office or other place of
7.30 business in this state, its political subdivisions, agencies, and instrumentalities bear to the
7.31 total deposits from all states, their residents, their political subdivisions, agencies, and
7.32 instrumentalities. In the case of an unregulated financial institution subject to this section,
7.33 these receipts are apportioned to this state based on the ratio that its gross business income,
7.34 excluding such receipts, earned from sources within this state bears to gross business
7.35 income, excluding such receipts, earned from sources within all states. For purposes
7.36 of this subdivision, deposits made by this state, its residents, its political subdivisions,

8.1 agencies, and instrumentalities must be attributed to this state, whether or not the deposits
8.2 are accepted or maintained by the taxpayer at locations within this state.

8.3 (o) A financial institution's interest in property described in section 290.015,
8.4 subdivision 3, paragraph (b), is included in the receipts factor in the same manner as assets
8.5 in the nature of securities or money market instruments are included in paragraph (n).