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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2228

03/15/2021 Authored by Howard
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; requiring worldwide combined reporting;
1.3 amending Minnesota Statutes 2020, section 290.17, subdivision 4, by adding a
1.4 subdivision.

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

1.6 Section 1. Minnesota Statutes 2020, section 290.17, subdivision 4, is amended to read:

1.7 Subd. 4. Unitary business principle. (a) If a trade or business conducted wholly within
1.8 this state or partly within and partly without this state is part of a unitary business, the entire
1.9 worldwide income of the unitary business is subject to apportionment pursuant to section
1.10 290.191. Notwithstanding subdivision 2, paragraph (c), none of the income of a unitary
1.11 business is considered to be derived from any particular source and none may be allocated
1.12 to a particular place except as provided by the applicable apportionment formula. The
1.13 provisions of this subdivision do not apply to business income subject to subdivision 5,
1.14 income of an insurance company, or income of an investment company determined under
1.15 section 290.36.

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

1.20 (c) Unity is presumed whenever there is unity of ownership, operation, and use, evidenced
1.21 by centralized management or executive force, centralized purchasing, advertising,
1.22 accounting, or other controlled interaction, but the absence of these centralized activities
1.23 will not necessarily evidence a nonunitary business. Unity is also presumed when business

2.1 activities or operations are of mutual benefit, dependent upon or contributory to one another,
2.2 either individually or as a group.

2.3 (d) Where a business operation conducted in Minnesota is owned by a business entity
2.4 that carries on business activity outside the state different in kind from that conducted within
2.5 this state, and the other business is conducted entirely outside the state, it is presumed that
2.6 the two business operations are unitary in nature, interrelated, connected, and interdependent
2.7 unless it can be shown to the contrary.

2.8 (e) Unity of ownership does not exist when two or more corporations are involved unless
2.9 more than 50 percent of the voting stock of each corporation is directly or indirectly owned
2.10 by a common owner or by common owners, either corporate or noncorporate, or by one or
2.11 more of the member corporations of the group. For this purpose, the term "voting stock"
2.12 shall include membership interests of mutual insurance holding companies formed under
2.13 section 66A.40.

2.14 ~~(f) The net income and apportionment factors under section 290.191 or 290.20 of foreign~~
2.15 ~~corporations and other foreign entities, but excluding a disqualified captive insurance~~
2.16 ~~company, which are part of a unitary business shall not be included in the net income or~~
2.17 ~~the apportionment factors of the unitary business; except that the income and apportionment~~
2.18 ~~factors of a foreign entity, other than an entity treated as a C corporation for federal income~~
2.19 ~~tax purposes, that are included in the federal taxable income, as defined in section 63 of the~~
2.20 ~~Internal Revenue Code as amended through the date named in section 290.01, subdivision~~
2.21 ~~19, of a domestic corporation, domestic entity, or individual must be included in determining~~
2.22 ~~net income and the factors to be used in the apportionment of net income pursuant to section~~
2.23 ~~290.191 or 290.20. A foreign corporation or other foreign entity which is not included on~~
2.24 ~~a combined report and which is required to file a return under this chapter shall file on a~~
2.25 ~~separate return basis.~~

2.26 ~~(g) For purposes of determining the net income of a unitary business and the factors to~~
2.27 ~~be used in the apportionment of net income pursuant to section 290.191 or 290.20, there~~
2.28 ~~must be included only the income and apportionment factors of domestic corporations or~~
2.29 ~~other domestic entities that are determined to be part of the unitary business pursuant to this~~
2.30 ~~subdivision, notwithstanding that foreign corporations or other foreign entities might be~~
2.31 ~~included in the unitary business; except that the income and apportionment factors of a~~
2.32 ~~foreign entity, other than an entity treated as a C corporation for federal income tax purposes,~~
2.33 ~~that is included in the federal taxable income, as defined in section 63 of the Internal Revenue~~
2.34 ~~Code as amended through the date named in section 290.01, subdivision 19, of a domestic~~
2.35 ~~corporation, domestic entity, or individual must be included in determining net income and~~

3.1 ~~the factors to be used in the apportionment of net income pursuant to section 290.191 or~~
 3.2 ~~290.20.~~

3.3 ~~(h)~~ (f) Each corporation or other entity, except a sole proprietorship, that is part of a
 3.4 unitary business must file combined reports as the commissioner determines. On the reports,
 3.5 all intercompany transactions between entities ~~included pursuant to paragraph (g)~~ must be
 3.6 eliminated and the entire net income of the unitary business determined in accordance with
 3.7 this subdivision is apportioned among the entities by using each entity's Minnesota factors
 3.8 for apportionment purposes in the numerators of the apportionment formula and the total
 3.9 factors for apportionment purposes of all entities ~~included pursuant to paragraph (g)~~ in the
 3.10 denominators of the apportionment formula. Except as otherwise provided by paragraph
 3.11 (f), all sales of the unitary business made within this state pursuant to section 290.191 or
 3.12 290.20 must be included on the combined report of a corporation or other entity that is a
 3.13 member of the unitary business and is subject to the jurisdiction of this state to impose tax
 3.14 under this chapter.

3.15 ~~(i)~~ (g) If a corporation has been divested from a unitary business and is included in a
 3.16 combined report for a fractional part of the common accounting period of the combined
 3.17 report:

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

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

3.22 ~~(j)~~ (h) For purposes of this subdivision, "insurance company" means an insurance
 3.23 company, as defined in section 290.01, subdivision 5b, that is not a disqualified captive
 3.24 insurance company.

3.25 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 3.26 31, 2020.

3.27 Sec. 2. Minnesota Statutes 2020, section 290.17, is amended by adding a subdivision to
 3.28 read:

3.29 **Subd. 4a. Foreign corporations and other foreign entities.** For purposes of imposing
 3.30 a tax under this chapter, the federal taxable income of a foreign corporation or other foreign
 3.31 entity must be computed as follows:

3.32 (1) a profit and loss statement must be prepared in the currency in which the books of
 3.33 account of the foreign corporation or other foreign entity are regularly maintained;

4.1 (2) except as determined by the commissioner, adjustments must be made to the profit
4.2 and loss statement to conform the statement to the accounting principles generally accepted
4.3 in the United States for the preparation of those statements;

4.4 (3) adjustments must be made to the profit and loss statement to conform it to the tax
4.5 accounting standards required by the commissioner;

4.6 (4) unless otherwise authorized by the commissioner, the profit and loss statement of
4.7 each member of the combined group, and the apportionment factors related to the combined
4.8 group, whether domestic or foreign, must be converted into the currency in which the parent
4.9 company maintains its books and records; and

4.10 (5) income apportioned to this state must be expressed in United States dollars.

4.11 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
4.12 31, 2020.