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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **2429**

03/13/2019 Authored by Loeffler
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; enforcement; disallowing the tax effect of transactions without
1.3 economic substance; imposing a penalty; amending Minnesota Statutes 2018,
1.4 sections 16D.08, subdivision 2; 270C.03, subdivision 1; 270C.33, subdivision 6;
1.5 289A.60, by adding a subdivision; proposing coding for new law in Minnesota
1.6 Statutes, chapter 270C.

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

1.8 Section 1. Minnesota Statutes 2018, section 16D.08, subdivision 2, is amended to read:

1.9 Subd. 2. **Powers.** (a) In addition to the collection remedies available to private collection
1.10 agencies in this state, the commissioner, with legal assistance from the attorney general,
1.11 may utilize any statutory authority granted to a referring agency for purposes of collecting
1.12 debt owed to that referring agency. The commissioner may also use the tax collection
1.13 remedies in sections 270C.03, subdivision 1, clause ~~(8)~~ (9), 270C.31, 270C.32, 270C.52,
1.14 subdivisions 2 and 3, 270C.63, 270C.65, and 270C.67 to 270C.72. A debtor may take
1.15 advantage of any administrative or appeal rights contained in the listed sections. For
1.16 administrative and appeal rights for nontax debts, references to administrative appeals or
1.17 to the taxpayer rights advocate shall be construed to be references to the case reviewer,
1.18 references to Tax Court shall be construed to mean district court, and offers in compromise
1.19 shall be submitted to the referring agency. A debtor who qualifies for cancellation of
1.20 collection costs under section 16D.11, subdivision 3, clause (1), can apply to the
1.21 commissioner for reduction or release of a continuous wage levy, if the debtor establishes
1.22 that the debtor needs all or a portion of the wages being levied upon to pay for essential
1.23 living expenses, such as food, clothing, shelter, medical care, or expenses necessary for
1.24 maintaining employment. The commissioner's determination not to reduce or release a

2.1 continuous wage levy is appealable to district court. The word "tax" or "taxes" when used
2.2 in the tax collection statutes listed in this subdivision also means debts referred under this
2.3 chapter.

2.4 (b) Before using the tax collection remedies listed in this subdivision, notice and demand
2.5 for payment of the amount due must be given to the person liable for the payment or
2.6 collection of the debt at least 30 days prior to the use of the remedies. The notice must be
2.7 sent to the person's last known address and must include a brief statement that sets forth in
2.8 simple and nontechnical terms the amount and source of the debt, the nature of the available
2.9 collection remedies, and remedies available to the debtor.

2.10 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
2.11 31, 2018.

2.12 Sec. 2. Minnesota Statutes 2018, section 270C.03, subdivision 1, is amended to read:

2.13 Subdivision 1. **Powers and duties.** The commissioner shall have and exercise the
2.14 following powers and duties:

2.15 (1) administer and enforce the assessment and collection of taxes;

2.16 (2) make determinations, corrections, and assessments with respect to taxes, including
2.17 interest, additions to taxes, and assessable penalties;

2.18 (3) disallow the tax effects of a transaction that does not have economic substance;

2.19 ~~(3)~~ (4) use statistical or other sampling techniques consistent with generally accepted
2.20 auditing standards in examining returns or records and making assessments;

2.21 ~~(4)~~ (5) investigate the tax laws of other states and countries, and formulate and submit
2.22 to the legislature such legislation as the commissioner may deem expedient to prevent
2.23 evasions of state revenue laws and to secure just and equal taxation and improvement in
2.24 the system of state revenue laws;

2.25 ~~(5)~~ (6) consult and confer with the governor upon the subject of taxation, the
2.26 administration of the laws in regard thereto, and the progress of the work of the department,
2.27 and furnish the governor, from time to time, such assistance and information as the governor
2.28 may require relating to tax matters;

2.29 ~~(6)~~ (7) execute and administer any agreement with the secretary of the treasury or the
2.30 Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice of the
2.31 United States or a representative of another state regarding the exchange of information and
2.32 administration of the state revenue laws;

3.1 ~~(7)~~(8) require town, city, county, and other public officers to report information as to
 3.2 the collection of taxes received from licenses and other sources, and such other information
 3.3 as may be needful in the work of the commissioner, in such form as the commissioner may
 3.4 prescribe;

3.5 ~~(8)~~(9) authorize the use of unmarked motor vehicles to conduct seizures or criminal
 3.6 investigations pursuant to the commissioner's authority;

3.7 ~~(9)~~(10) authorize the participation in audits performed by the Multistate Tax Commission.
 3.8 For the purposes of chapter 270B, the Multistate Tax Commission will be considered to be
 3.9 a state for the purposes of auditing corporate sales, excise, and income tax returns;

3.10 ~~(10)~~(11) maintain toll-free telephone access for taxpayer assistance for calls from
 3.11 locations within the state; and

3.12 ~~(11)~~(12) exercise other powers and authority and perform other duties required of or
 3.13 imposed upon the commissioner by law.

3.14 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 3.15 31, 2018.

3.16 Sec. 3. Minnesota Statutes 2018, section 270C.33, subdivision 6, is amended to read:

3.17 Subd. 6. **Assessment presumed valid.** (a) A return or assessment of tax made by the
 3.18 commissioner is prima facie correct and valid. The taxpayer has the burden of establishing
 3.19 its incorrectness or invalidity in any related action or proceeding.

3.20 (b) To overcome the presumption that an order of the commissioner that disallows the
 3.21 tax effects of a transaction because the commissioner determined the transaction does not
 3.22 have economic substance pursuant to section 270C.03, subdivision 1, clause (3), is prima
 3.23 facie correct and valid, the taxpayer must prove with clear and convincing evidence that
 3.24 the transaction has economic substance.

3.25 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 3.26 31, 2018.

3.27 Sec. 4. **[270C.331] PREVENTING TAX EVASION.**

3.28 Subdivision 1. **Economic substance.** (a) For purposes of disallowing the tax effects of
 3.29 a transaction that does not have economic substance pursuant to section 270C.03, subdivision
 3.30 1, clause (3), a transaction shall be treated as having economic substance only if:

4.1 (1) the transaction changes in a meaningful way, apart from tax effects, the taxpayer's
4.2 economic position; and

4.3 (2) the taxpayer has a substantial purpose, apart from tax effects, for entering into the
4.4 transaction.

4.5 (b) In determining whether the requirements of paragraph (a), clauses (1) and (2), are
4.6 met, the potential for profit of a transaction shall be taken into account only if the present
4.7 value of the reasonable expected pretax profit from the transaction is substantial in relation
4.8 to the present value of the expected net tax benefits that would be allowed if the transaction
4.9 was respected. Fees and other transaction expenses shall be taken into account as expenses
4.10 in determining pretax profit.

4.11 (c) For purposes of paragraph (a), clause (2), achieving a financial accounting benefit
4.12 shall not be taken into account as a purpose for entering into a transaction if the origin of
4.13 the financial accounting benefit is a reduction of federal, state, or local tax.

4.14 Subd. 2. **Apart from tax effects.** For purposes of this section, "apart from tax effects"
4.15 means apart from the state and local tax effects arising from the application of the laws of
4.16 any state or local unit of government to the form of the transaction, the federal tax effects
4.17 resulting from the transaction, or both.

4.18 Subd. 3. **Transaction.** For purposes of this section and section 270C.03, subdivision 1,
4.19 clause (3), "transaction" includes a series of transactions.

4.20 Subd. 4. **Personal transactions of individuals.** In the case of an individual, subdivision
4.21 1 applies only to transactions entered into in connection with a trade or business or an
4.22 activity engaged in for the production of income.

4.23 Subd. 5. **Rulemaking.** (a) The commissioner shall adopt rules to carry out the provisions
4.24 of this section. The rules must include, at a minimum, examples of transactions that will
4.25 not be challenged as not having economic substance and examples of transactions that may
4.26 be challenged as not having economic substance.

4.27 (b) The commissioner shall establish and publish a formal departmental procedure for
4.28 uniform application of this section, except publishing the procedure is subject to the
4.29 limitations of protected nonpublic data in section 270B.02.

4.30 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
4.31 31, 2018.

5.1 Sec. 5. Minnesota Statutes 2018, section 289A.60, is amended by adding a subdivision to
5.2 read:

5.3 Subd. 27a. **Noneconomic substance transaction understatement penalty.** (a) If the
5.4 tax effects of a transaction are disallowed pursuant to section 270C.03, subdivision 1, clause
5.5 (3), a penalty equal to 20 percent of the amount of the disclosed noneconomic substance
5.6 transaction understatement must be added to the tax. This subdivision applies to any income
5.7 or item that is attributable to any transaction disallowed pursuant to section 270C.03,
5.8 subdivision 1, clause (3).

5.9 (b) If the tax effects of a transaction are disallowed pursuant to section 270C.03,
5.10 subdivision 1, clause (3), a penalty equal to 40 percent of the amount of the nondisclosed
5.11 noneconomic substance transaction understatement must be added to the tax. This subdivision
5.12 applies to any income or item that is attributable to any transaction disallowed pursuant to
5.13 section 270C.03, subdivision 1, clause (3).

5.14 (c) For purposes of this subdivision, "disclosed noneconomic substance transaction"
5.15 means a transaction that fails to meet the criteria for having economic substance as described
5.16 in section 270C.03, subdivision 1, clause (3), with respect to which the relevant facts affecting
5.17 the tax treatment are adequately disclosed in the return or in a statement attached to the
5.18 return.

5.19 (d) For purposes of this subdivision, "nondisclosed noneconomic substance transaction"
5.20 means a transaction that fails to meet the criteria for having economic substance as described
5.21 in section 270C.03, subdivision 1, clause (3), with respect to which the relevant facts affecting
5.22 the tax treatment are not adequately disclosed in the return nor in a statement attached to
5.23 the return.

5.24 (e) In no event shall any amendment or supplement to a tax return be taken into account
5.25 for purposes of this subdivision to reduce the noneconomic substance transaction
5.26 understatement if the amendment or supplement is filed after the date the taxpayer is first
5.27 contacted by the commissioner regarding examination of the return.

5.28 (f) For purposes of this subdivision, "understatement" means the product of:

5.29 (1) the amount of the increase, if any, in taxable income that results from a difference
5.30 between the proper tax treatment of an item to which section 270C.03, subdivision 1, clause
5.31 (3), applies and the taxpayer's treatment of that item as shown on the taxpayer's tax return.
5.32 For purposes of this clause, any reduction of the excess of deductions allowed for the taxable
5.33 year over gross income for that year, and any reduction in the amount of capital losses that

6.1 would, without regard to section 1211 of the Internal Revenue Code, be allowed for that
6.2 year, must be treated as an increase in taxable income; and

6.3 (2) the highest rate of tax imposable on the taxpayer under section 290.06 determined
6.4 without regard to the understatement.

6.5 (g) If the noneconomic substance transaction understatement penalty is imposed under
6.6 this subdivision, the noneconomic substance transaction understatement penalty applies in
6.7 lieu of the penalties imposed under subdivision 27.

6.8 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
6.9 31, 2018.