

A bill for an act
relating to taxation; corporate franchise; limiting the deemed dividend deduction
for foreign operating corporations; amending Minnesota Statutes 2006, section
290.17, subdivision 4.

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

Section 1. Minnesota Statutes 2006, section 290.17, subdivision 4, is amended to read:

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

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

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

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

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

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

(f) The net income and apportionment factors under section 290.191 or 290.20 of foreign corporations and other foreign entities which are part of a unitary business shall not be included in the net income or the apportionment factors of the unitary business. A foreign corporation or other foreign entity which is required to file a return under this chapter shall file on a separate return basis. The net income and apportionment factors under section 290.191 or 290.20 of foreign operating corporations shall not be included in the net income or the apportionment factors of the unitary business except as provided in paragraph (g).

(g) The adjusted net income of a foreign operating corporation shall be deemed to be paid as a dividend on the last day of its taxable year to each shareholder thereof, in proportion to each shareholder's ownership, with which such corporation is engaged in a unitary business. Such deemed dividend shall be treated as a dividend under section 290.21, subdivision 4. The dividends received deduction is not allowed on dividends, interest, royalties, capital gains, or other like income received by a foreign operating corporation.

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2006.