

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH SESSION

S.F. No. 2905

(SENATE AUTHORS: NELSON)

DATE	D-PG	OFFICIAL STATUS
03/26/2014	6867	Introduction and first reading Referred to Taxes

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A bill for an act

relating to taxation; corporate franchise; allowing corporations a deduction for

foreign royalties; amending Minnesota Statutes 2013 Supplement, sections

290.01, subdivision 19d; 290.0921, subdivision 3; 290.17, subdivision 4; 290.191,

subdivision 5; proposing coding for new law in Minnesota Statutes, chapter 290.

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

Section 1. Minnesota Statutes 2013 Supplement, section 290.01, subdivision 19d,

is amended to read:

Subd. 19d. **Corporations; modifications decreasing federal taxable income.** For

corporations, there shall be subtracted from federal taxable income after the increases

provided in subdivision 19c:

(1) the amount of foreign dividend gross-up added to gross income for federal

income tax purposes under section 78 of the Internal Revenue Code;

(2) the amount of salary expense not allowed for federal income tax purposes due to

claiming the work opportunity credit under section 51 of the Internal Revenue Code;

(3) any dividend (not including any distribution in liquidation) paid within the

taxable year by a national or state bank to the United States, or to any instrumentality of

the United States exempt from federal income taxes, on the preferred stock of the bank

owned by the United States or the instrumentality;

(4) amounts disallowed for intangible drilling costs due to differences between

this chapter and the Internal Revenue Code in taxable years beginning before January

1, 1987, as follows:

(i) to the extent the disallowed costs are represented by physical property, an amount

equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09,

subdivision 7, subject to the modifications contained in subdivision 19e; and

(ii) to the extent the disallowed costs are not represented by physical property, an amount equal to the allowance for cost depletion under Minnesota Statutes 1986, section 290.09, subdivision 8;

(5) the deduction for capital losses pursuant to sections 1211 and 1212 of the Internal Revenue Code, except that:

(i) for capital losses incurred in taxable years beginning after December 31, 1986, capital loss carrybacks shall not be allowed;

(ii) for capital losses incurred in taxable years beginning after December 31, 1986, a capital loss carryover to each of the 15 taxable years succeeding the loss year shall be allowed;

(iii) for capital losses incurred in taxable years beginning before January 1, 1987, a capital loss carryback to each of the three taxable years preceding the loss year, subject to the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed; and

(iv) for capital losses incurred in taxable years beginning before January 1, 1987, a capital loss carryover to each of the five taxable years succeeding the loss year to the extent such loss was not used in a prior taxable year and subject to the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed;

(6) an amount for interest and expenses relating to income not taxable for federal income tax purposes, if (i) the income is taxable under this chapter and (ii) the interest and expenses were disallowed as deductions under the provisions of section 171(a)(2), 265 or 291 of the Internal Revenue Code in computing federal taxable income;

(7) in the case of mines, oil and gas wells, other natural deposits, and timber for which percentage depletion was disallowed pursuant to subdivision 19c, clause (8), a reasonable allowance for depletion based on actual cost. In the case of leases the deduction must be apportioned between the lessor and lessee in accordance with rules prescribed by the commissioner. In the case of property held in trust, the allowable deduction must be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the trust, or if there is no provision in the instrument, on the basis of the trust's income allocable to each;

(8) for certified pollution control facilities placed in service in a taxable year beginning before December 31, 1986, and for which amortization deductions were elected under section 169 of the Internal Revenue Code of 1954, as amended through December 31, 1985, an amount equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09, subdivision 7;

(9) amounts included in federal taxable income that are due to refunds of income, excise, or franchise taxes based on net income or related minimum taxes paid by the

corporation to Minnesota, another state, a political subdivision of another state, the District of Columbia, or a foreign country or possession of the United States to the extent that the taxes were added to federal taxable income under subdivision 19c, clause (1), in a prior taxable year;

(10) income or gains from the business of mining as defined in section 290.05, subdivision 1, clause (a), that are not subject to Minnesota franchise tax;

(11) the amount of disability access expenditures in the taxable year which are not allowed to be deducted or capitalized under section 44(d)(7) of the Internal Revenue Code;

(12) the amount of qualified research expenses not allowed for federal income tax purposes under section 280C(c) of the Internal Revenue Code, but only to the extent that the amount exceeds the amount of the credit allowed under section 290.068;

(13) the amount of salary expenses not allowed for federal income tax purposes due to claiming the Indian employment credit under section 45A(a) of the Internal Revenue Code;

(14) any decrease in subpart F income, as defined in section 952(a) of the Internal Revenue Code, for the taxable year when subpart F income is calculated without regard to the provisions of Division C, title III, section 303(b) of Public Law 110-343;

(15) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19c, clause (12), an amount equal to one-fifth of the delayed depreciation. For purposes of this clause, "delayed depreciation" means the amount of the addition made by the taxpayer under subdivision 19c, clause (12). The resulting delayed depreciation cannot be less than zero;

(16) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19c, clause (13), an amount equal to one-fifth of the amount of the addition;

(17) to the extent included in federal taxable income, discharge of indebtedness income resulting from reacquisition of business indebtedness included in federal taxable income under section 108(i) of the Internal Revenue Code. This subtraction applies only to the extent that the income was included in net income in a prior year as a result of the addition under subdivision 19c, clause (16); ~~and~~

(18) the amount of expenses not allowed for federal income tax purposes due to claiming the railroad track maintenance credit under section 45G(a) of the Internal Revenue Code; and

(19) the foreign royalties deduction under section 290.0803.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2013.

4.1 Sec. 2. **[290.0803] FOREIGN ROYALTIES DEDUCTION.**

4.2 (a) A corporation is allowed a deduction equal to 80 percent of royalties, fees, or
4.3 other like income accrued or received from a foreign corporation which is part of the same
4.4 unitary business as the receiving corporation, unless the income resulting from such
4.5 payments or accruals is income from sources within the United States as defined in subtitle
4.6 A, chapter 1, subchapter N, part 1, of the Internal Revenue Code.

4.7 (b) The foreign royalty deduction provided in this section shall be allowed only with
4.8 respect to foreign royalties that are included in a corporation's Minnesota taxable net
4.9 income for the taxable year. The foreign royalty deduction provided in this section does not
4.10 apply to a foreign royalty from a corporation which, for the taxable year of the corporation
4.11 in which the distribution is made or for the next preceding taxable year of the corporation,
4.12 is a corporation exempt from tax under section 501 of the Internal Revenue Code.

4.13 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
4.14 December 31, 2013.

4.15 Sec. 3. Minnesota Statutes 2013 Supplement, section 290.0921, subdivision 3, is
4.16 amended to read:

4.17 Subd. 3. **Alternative minimum taxable income.** "Alternative minimum taxable
4.18 income" is Minnesota net income as defined in section 290.01, subdivision 19, and
4.19 includes the adjustments and tax preference items in sections 56, 57, 58, and 59(d), (e),
4.20 (f), and (h) of the Internal Revenue Code. If a corporation files a separate company
4.21 Minnesota tax return, the minimum tax must be computed on a separate company basis.
4.22 If a corporation is part of a tax group filing a unitary return, the minimum tax must be
4.23 computed on a unitary basis. The following adjustments must be made.

4.24 (1) For purposes of the depreciation adjustments under section 56(a)(1) and
4.25 56(g)(4)(A) of the Internal Revenue Code, the basis for depreciable property placed in
4.26 service in a taxable year beginning before January 1, 1990, is the adjusted basis for federal
4.27 income tax purposes, including any modification made in a taxable year under section
4.28 290.01, subdivision 19e, or Minnesota Statutes 1986, section 290.09, subdivision 7,
4.29 paragraph (c).

4.30 For taxable years beginning after December 31, 2000, the amount of any remaining
4.31 modification made under section 290.01, subdivision 19e, or Minnesota Statutes 1986,
4.32 section 290.09, subdivision 7, paragraph (c), not previously deducted is a depreciation
4.33 allowance in the first taxable year after December 31, 2000.

4.34 (2) The portion of the depreciation deduction allowed for federal income tax
4.35 purposes under section 168(k) of the Internal Revenue Code that is required as an

addition under section 290.01, subdivision 19c, clause (12), is disallowed in determining alternative minimum taxable income.

(3) The subtraction for depreciation allowed under section 290.01, subdivision 19d, clause (15), is allowed as a depreciation deduction in determining alternative minimum taxable income.

(4) The alternative tax net operating loss deduction under sections 56(a)(4) and 56(d) of the Internal Revenue Code does not apply.

(5) The special rule for certain dividends under section 56(g)(4)(C)(ii) of the Internal Revenue Code does not apply.

(6) The tax preference for depletion under section 57(a)(1) of the Internal Revenue Code does not apply.

(7) The tax preference for intangible drilling costs under section 57(a)(2) of the Internal Revenue Code must be calculated without regard to subparagraph (E) and the subtraction under section 290.01, subdivision 19d, clause (4).

(8) The tax preference for tax exempt interest under section 57(a)(5) of the Internal Revenue Code does not apply.

(9) The tax preference for charitable contributions of appreciated property under section 57(a)(6) of the Internal Revenue Code does not apply.

(10) For purposes of calculating the tax preference for accelerated depreciation or amortization on certain property placed in service before January 1, 1987, under section 57(a)(7) of the Internal Revenue Code, the deduction allowable for the taxable year is the deduction allowed under section 290.01, subdivision 19e.

For taxable years beginning after December 31, 2000, the amount of any remaining modification made under section 290.01, subdivision 19e, not previously deducted is a depreciation or amortization allowance in the first taxable year after December 31, 2004.

(11) For purposes of calculating the adjustment for adjusted current earnings in section 56(g) of the Internal Revenue Code, the term "alternative minimum taxable income" as it is used in section 56(g) of the Internal Revenue Code, means alternative minimum taxable income as defined in this subdivision, determined without regard to the adjustment for adjusted current earnings in section 56(g) of the Internal Revenue Code.

(12) For purposes of determining the amount of adjusted current earnings under section 56(g)(3) of the Internal Revenue Code, no adjustment shall be made under section 56(g)(4) of the Internal Revenue Code with respect to (i) the amount of foreign dividend gross-up subtracted as provided in section 290.01, subdivision 19d, clause (1), or (ii) the amount of refunds of income, excise, or franchise taxes subtracted as provided in section

290.01, subdivision 19d, clause (9), or (iii) the amount of royalties, fees, or other like income subtracted as provided in section 290.0803.

(13) Alternative minimum taxable income excludes the income from operating in a job opportunity building zone as provided under section 469.317.

(14) Alternative minimum taxable income excludes the income from operating in a biotechnology and health sciences industry zone as provided under section 469.337.

Items of tax preference must not be reduced below zero as a result of the modifications in this subdivision.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2013.

Sec. 4. Minnesota Statutes 2013 Supplement, 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 does not exist when two or more corporations are involved unless more than 50 percent of the voting stock of each corporation 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; except that the income and apportionment factors of a foreign entity, other than an entity treated as a C corporation for federal income tax purposes, that are included in the federal taxable income, as defined in section 63 of the Internal Revenue Code as amended through the date named in section 290.01, subdivision 19, of a domestic corporation, domestic entity, or individual must be included in determining net income and the factors to be used in the apportionment of net income pursuant to section 290.191 or 290.20. A foreign corporation or other foreign entity which is not included on a combined report and which is required to file a return under this chapter shall file on a separate return basis.

(g) 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 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; except that the income and apportionment factors of a foreign entity, other than an entity treated as a C corporation for federal income tax purposes, that is included in the federal taxable income, as defined in section 63 of the Internal Revenue Code as amended through the date named in section 290.01, subdivision 19, of a domestic corporation, domestic entity, or individual must be included in determining net income and the factors to be used in the apportionment of net income pursuant to section 290.191 or 290.20.

(h) 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 (g) 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 (g) in the denominators of the apportionment formula. Except as otherwise provided by paragraph (f), all sales of the unitary business made within this state pursuant to section 290.191 or 290.20 must be included on the combined report of a corporation or other entity that is a member of the unitary business and is subject to the jurisdiction of this state to impose tax under this chapter.

(i) 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.

(j) Deductions for expenses, interest, or taxes otherwise allowable under this chapter that are connected with or allocable against royalties, fees, or other like income described in section 290.0803 shall not be disallowed.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2013.

Sec. 5. Minnesota Statutes 2013 Supplement, section 290.191, subdivision 5, is amended to read:

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

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

(1) interest;

(2) dividends;

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

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

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

(6) royalties, fees, or other like income that qualifies for a deduction from taxable income under section 290.0803.

(b) Sales of tangible personal property are made within this state if the property is received by a purchaser at a point within this state, and the taxpayer is taxable in this state, regardless of the f.o.b. point, other conditions of the sale, or the ultimate destination of the property.

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

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

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

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

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

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

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

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

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

10.1 (h) Royalties and other income not qualifying for the deduction under section
10.2 290.0803 received for the use of or for the privilege of using intangible property, including
10.3 patents, know-how, formulas, designs, processes, patterns, copyrights, trade names,
10.4 service names, franchises, licenses, contracts, customer lists, or similar items, must be
10.5 attributed to the state in which the property is used by the purchaser. If the property is used
10.6 in more than one state, the royalties or other income must be apportioned to this state pro
10.7 rata according to the portion of use in this state. If the portion of use in this state cannot
10.8 be determined, the royalties or other income must be excluded from both the numerator
10.9 and the denominator. Intangible property is used in this state if the purchaser uses the
10.10 intangible property or the rights therein in the regular course of its business operations in
10.11 this state, regardless of the location of the purchaser's customers.

10.12 (i) Sales of intangible property are made within the state in which the property is
10.13 used by the purchaser. If the property is used in more than one state, the sales must be
10.14 apportioned to this state pro rata according to the portion of use in this state. If the
10.15 portion of use in this state cannot be determined, the sale must be excluded from both the
10.16 numerator and the denominator of the sales factor. Intangible property is used in this
10.17 state if the purchaser used the intangible property in the regular course of its business
10.18 operations in this state.

10.19 (j) Receipts from the performance of services must be attributed to the state where
10.20 the services are received. For the purposes of this section, receipts from the performance
10.21 of services provided to a corporation, partnership, or trust may only be attributed to a state
10.22 where it has a fixed place of doing business. If the state where the services are received is
10.23 not readily determinable or is a state where the corporation, partnership, or trust receiving
10.24 the service does not have a fixed place of doing business, the services shall be deemed
10.25 to be received at the location of the office of the customer from which the services were
10.26 ordered in the regular course of the customer's trade or business. If the ordering office
10.27 cannot be determined, the services shall be deemed to be received at the office of the
10.28 customer to which the services are billed.

10.29 (k) For the purposes of this subdivision and subdivision 6, paragraph (l), receipts
10.30 from management, distribution, or administrative services performed by a corporation
10.31 or trust for a fund of a corporation or trust regulated under United States Code, title 15,
10.32 sections 80a-1 through 80a-64, must be attributed to the state where the shareholder of
10.33 the fund resides. Under this paragraph, receipts for services attributed to shareholders are
10.34 determined on the basis of the ratio of: (1) the average of the outstanding shares in the
10.35 fund owned by shareholders residing within Minnesota at the beginning and end of each
10.36 year; and (2) the average of the total number of outstanding shares in the fund at the

11.1 beginning and end of each year. Residence of the shareholder, in the case of an individual,
11.2 is determined by the mailing address furnished by the shareholder to the fund. Residence
11.3 of the shareholder, when the shares are held by an insurance company as a depositor for
11.4 the insurance company policyholders, is the mailing address of the policyholders. In
11.5 the case of an insurance company holding the shares as a depositor for the insurance
11.6 company policyholders, if the mailing address of the policyholders cannot be determined
11.7 by the taxpayer, the receipts must be excluded from both the numerator and denominator.
11.8 Residence of other shareholders is the mailing address of the shareholder.

11.9 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
11.10 December 31, 2013.