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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3494

03/08/2018 Authored by Davids
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; clarifying the application of the tax to
1.3 certain captive insurance companies; amending Minnesota Statutes 2016, section
1.4 290.01, by adding a subdivision; Minnesota Statutes 2017 Supplement, sections
1.5 290.01, subdivision 4a; 290.05, subdivision 1; 290.17, subdivision 4.

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

1.7 Section 1. Minnesota Statutes 2017 Supplement, section 290.01, subdivision 4a, is amended
1.8 to read:

1.9 Subd. 4a. **Financial institution.** (a) "Financial institution" means:

1.10 (1) any corporation or other business entity registered (i) under state law as a bank
1.11 holding company; (ii) under the federal Bank Holding Company Act of 1956, as amended;
1.12 or (iii) as a savings and loan holding company under the federal National Housing Act, as
1.13 amended;

1.14 (2) a national bank organized and existing as a national bank association pursuant to the
1.15 provisions of United States Code, title 12, chapter 2;

1.16 (3) a savings association or federal savings bank as defined in United States Code, title
1.17 12, section 1813(b)(1);

1.18 (4) any bank or thrift institution incorporated or organized under the laws of any state;

1.19 (5) any corporation organized under United States Code, title 12, sections 611 to 631;

1.20 (6) any agency or branch of a foreign depository as defined under United States Code,
1.21 title 12, section 3101;

2.1 (7) any corporation or other business entity that is more than 50 percent owned, directly
 2.2 or indirectly, by any person or business entity described in clauses (1) to (6), other than an
 2.3 insurance company taxable under chapter 297I;

2.4 (8) a corporation or other business entity that derives more than 50 percent of its total
 2.5 gross income for financial accounting purposes from finance leases. For the purposes of
 2.6 this clause, "gross income" means the average from the current tax year and immediately
 2.7 preceding two years and excludes gross income from incidental or occasional transactions.
 2.8 For purposes of this clause, "finance lease" means any lease transaction that is the functional
 2.9 equivalent of an extension of credit and that transfers substantially all the benefits and risks
 2.10 incident to the ownership of property, including any direct financing lease or leverage lease
 2.11 that meets the criteria of Financial Accounting Standards Board Statement No. 13, accounting
 2.12 for leases, or any other lease that is accounted for as financing by a lessor under generally
 2.13 accepted accounting principles; or

2.14 (9) any other person or business entity, other than an insurance company ~~taxable under~~
 2.15 ~~chapter 297I~~, that derives more than 50 percent of its gross income from activities that an
 2.16 entity described in clauses (2) to (6) or (8) is authorized to transact. For the purposes of this
 2.17 clause, gross income does not include income from nonrecurring, extraordinary items.

2.18 (b) The commissioner is authorized to exclude any person from the application of
 2.19 paragraph (a), clause (9), if the person proves by clear and convincing evidence that the
 2.20 person's income-producing activity is not in substantial competition with any person described
 2.21 in paragraph (a), clauses (2) to (6) or (8).

2.22 **EFFECTIVE DATE.** This section is effective retroactively for taxable years beginning
 2.23 after December 31, 2016.

2.24 Sec. 2. Minnesota Statutes 2016, section 290.01, is amended by adding a subdivision to
 2.25 read:

2.26 **Subd. 5c. Disqualified captive insurance company.** (a) "Disqualified captive insurance
 2.27 company" means an insurance company that:

2.28 (1)(i) is licensed as a captive insurance company under the laws of any state or foreign
 2.29 country; or

2.30 (ii) derives 80 percent or more of its total premiums for the taxable year from entities
 2.31 that are members of the unitary business, as that term is used in section 290.17; and

2.32 (2)(i) receives less than 50 percent of its gross receipts for the taxable year from
 2.33 premiums; or

3.1 (ii) pays less than 0.25 percent of its total premiums for the taxable year in tax under
 3.2 chapter 297I or a comparable tax of another state or country.

3.3 (b) For purposes of this subdivision, "premiums" means amounts paid for arrangements
 3.4 that constitute insurance for federal income tax purposes, but excludes return premiums,
 3.5 premiums for reinsurance assumed from other insurance companies, and any other premiums
 3.6 that are or would be exempt from taxation under section 297I.05 as a result of their type or
 3.7 character, if the insurance was for business in Minnesota.

3.8 **EFFECTIVE DATE.** This section is effective retroactively for taxable years beginning
 3.9 after December 31, 2016.

3.10 Sec. 3. Minnesota Statutes 2017 Supplement, section 290.05, subdivision 1, is amended
 3.11 to read:

3.12 Subdivision 1. **Exempt entities.** The following corporations, individuals, estates, trusts,
 3.13 and organizations shall be exempted from taxation under this chapter, provided that every
 3.14 such person or corporation claiming exemption under this chapter, in whole or in part, must
 3.15 establish to the satisfaction of the commissioner the taxable status of any income or activity:

3.16 (a) corporations, individuals, estates, and trusts engaged in the business of mining or
 3.17 producing iron ore and mining, producing, or refining other ores, metals, and minerals, the
 3.18 mining, production, or refining of which is subject to the occupation tax imposed by section
 3.19 298.01; but if any such corporation, individual, estate, or trust engages in any other business
 3.20 or activity or has income from any property not used in such business it shall be subject to
 3.21 this tax computed on the net income from such property or such other business or activity.
 3.22 Royalty shall not be considered as income from the business of mining or producing iron
 3.23 ore within the meaning of this section;

3.24 (b) the United States of America, the state of Minnesota or any political subdivision of
 3.25 either agencies or instrumentalities, whether engaged in the discharge of governmental or
 3.26 proprietary functions; and

3.27 (c) any insurance company, ~~as defined in section 290.17, subdivision 4, paragraph (j),~~
 3.28 ~~but including any insurance company licensed and domiciled in another state that grants,~~
 3.29 ~~on a reciprocal basis, exemption from retaliatory taxes~~ other than a disqualified captive
 3.30 insurance company.

3.31 **EFFECTIVE DATE.** This section is effective retroactively for taxable years beginning
 3.32 after December 31, 2016.

4.1 Sec. 4. Minnesota Statutes 2017 Supplement, section 290.17, subdivision 4, is amended
4.2 to read:

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

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

4.15 (c) Unity is presumed whenever there is unity of ownership, operation, and use, evidenced
4.16 by centralized management or executive force, centralized purchasing, advertising,
4.17 accounting, or other controlled interaction, but the absence of these centralized activities
4.18 will not necessarily evidence a nonunitary business. Unity is also presumed when business
4.19 activities or operations are of mutual benefit, dependent upon or contributory to one another,
4.20 either individually or as a group.

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

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

4.32 (f) The net income and apportionment factors under section 290.191 or 290.20 of foreign
4.33 corporations and other foreign entities, but excluding an insurance company as defined in
4.34 section 290.01, subdivision 5b, that is also a disqualified captive insurance company, which

5.1 are part of a unitary business shall not be included in the net income or the apportionment
5.2 factors of the unitary business; except that the income and apportionment factors of a foreign
5.3 entity, other than an entity treated as a C corporation for federal income tax purposes, that
5.4 are included in the federal taxable income, as defined in section 63 of the Internal Revenue
5.5 Code as amended through the date named in section 290.01, subdivision 19, of a domestic
5.6 corporation, domestic entity, or individual must be included in determining net income and
5.7 the factors to be used in the apportionment of net income pursuant to section 290.191 or
5.8 290.20. A foreign corporation or other foreign entity which is not included on a combined
5.9 report and which is required to file a return under this chapter shall file on a separate return
5.10 basis.

5.11 (g) For purposes of determining the net income of a unitary business and the factors to
5.12 be used in the apportionment of net income pursuant to section 290.191 or 290.20, there
5.13 must be included only the income and apportionment factors of domestic corporations or
5.14 other domestic entities that are determined to be part of the unitary business pursuant to this
5.15 subdivision, notwithstanding that foreign corporations or other foreign entities might be
5.16 included in the unitary business; except that the income and apportionment factors of a
5.17 foreign entity, other than an entity treated as a C corporation for federal income tax purposes,
5.18 that is included in the federal taxable income, as defined in section 63 of the Internal Revenue
5.19 Code as amended through the date named in section 290.01, subdivision 19, of a domestic
5.20 corporation, domestic entity, or individual must be included in determining net income and
5.21 the factors to be used in the apportionment of net income pursuant to section 290.191 or
5.22 290.20.

5.23 (h) Each corporation or other entity, except a sole proprietorship, that is part of a unitary
5.24 business must file combined reports as the commissioner determines. On the reports, all
5.25 intercompany transactions between entities included pursuant to paragraph (g) must be
5.26 eliminated and the entire net income of the unitary business determined in accordance with
5.27 this subdivision is apportioned among the entities by using each entity's Minnesota factors
5.28 for apportionment purposes in the numerators of the apportionment formula and the total
5.29 factors for apportionment purposes of all entities included pursuant to paragraph (g) in the
5.30 denominators of the apportionment formula. Except as otherwise provided by paragraph
5.31 (f), all sales of the unitary business made within this state pursuant to section 290.191 or
5.32 290.20 must be included on the combined report of a corporation or other entity that is a
5.33 member of the unitary business and is subject to the jurisdiction of this state to impose tax
5.34 under this chapter.

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

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

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

6.8 (j) For purposes of this subdivision, "insurance company" means an insurance company,
6.9 as defined in section 290.01, subdivision 5b, that is:

6.10 ~~(1) licensed to engage in the business of insurance in Minnesota pursuant to chapter~~
6.11 ~~60A; or~~

6.12 ~~(2) domiciled and licensed to engage in the business of insurance in another state or~~
6.13 ~~country that imposes retaliatory taxes, fines, deposits, penalties, licenses, or fees and that~~
6.14 ~~does not grant, on a reciprocal basis, exemption from such retaliatory taxes to insurance~~
6.15 ~~companies or their agents domiciled in Minnesota.~~

6.16 ~~(k) For purposes of this subdivision, "retaliatory taxes" means taxes imposed on insurance~~
6.17 ~~companies organized in another state or country that result from the fact that an insurance~~
6.18 ~~company organized in the taxing jurisdiction and doing business in the other jurisdiction is~~
6.19 ~~subject to taxes, fines, deposits, penalties, licenses, or fees in an amount exceeding that~~
6.20 ~~imposed by the taxing jurisdiction upon an insurance company organized in the other state~~
6.21 ~~or country and doing business to the same extent in the taxing jurisdiction not a disqualified~~
6.22 ~~captive insurance company.~~

6.23 **EFFECTIVE DATE.** This section is effective retroactively for taxable years beginning
6.24 after December 31, 2016.