

1.1 A bill for an act

1.2 relating to taxation; clarifying nexus to impose tax on pass-through interests of  
1.3 nonresident individuals; amending Minnesota Statutes 2008, sections 290.014,  
1.4 subdivision 2; 290.17, subdivision 2; 291.005, subdivision 1.

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

1.6 Section 1. Minnesota Statutes 2008, section 290.014, subdivision 2, is amended to read:

1.7 Subd. 2. **Nonresident individuals.** Except as provided in section 290.015, a  
1.8 nonresident individual is subject to the return filing requirements and to tax as provided in  
1.9 this chapter to the extent that the income of the nonresident individual is:

1.10 (1) allocable to this state under section 290.17, 290.191, or 290.20;

1.11 (2) taxed to the individual under the Internal Revenue Code (or not taxed under the  
1.12 Internal Revenue Code by reason of its character but of a character which is taxable under  
1.13 this chapter) in the individual's capacity as a beneficiary of an estate with income allocable  
1.14 to this state under section 290.17, 290.191, or 290.20 and the income, taking into account  
1.15 the income character provisions of section 662(b) of the Internal Revenue Code, would be  
1.16 allocable to this state under section 290.17, 290.191, or 290.20 if realized by the individual  
1.17 directly from the source from which realized by the estate;

1.18 (3) taxed to the individual under the Internal Revenue Code (or not taxed under the  
1.19 Internal Revenue Code by reason of its character but of a character that is taxable under  
1.20 this chapter) in the individual's capacity as a beneficiary or grantor or other person treated  
1.21 as a substantial owner of a trust with income allocable to this state under section 290.17,  
1.22 290.191, or 290.20 and the income, taking into account the income character provisions of  
1.23 section 652(b), 662(b), or 664(b) of the Internal Revenue Code, would be allocable to this

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2.1 state under section 290.17, 290.191, or 290.20 if realized by the individual directly from  
2.2 the source from which realized by the trust;

2.3 (4) taxed to the individual under the Internal Revenue Code (or not taxed under the  
2.4 Internal Revenue Code by reason of its character but of a character which is taxable under  
2.5 this chapter) in the individual's capacity as a limited or general partner in a partnership  
2.6 with income allocable to this state under section 290.17, 290.191, or 290.20 and the  
2.7 income, taking into account the income character provisions of section 702(b) of the  
2.8 Internal Revenue Code, would be allocable to this state under section 290.17, 290.191,  
2.9 or 290.20 if realized by the individual directly from the source from which realized by  
2.10 the partnership; ~~or~~

2.11 (5) taxed to the individual under the Internal Revenue Code (or not taxed under the  
2.12 Internal Revenue Code by reason of its character but of a character which is taxable under  
2.13 this chapter) in the individual's capacity as a shareholder of a corporation treated as an  
2.14 "S" corporation under section 290.9725, and income allocable to this state under section  
2.15 290.17, 290.191, or 290.20 and the income, taking into account the income character  
2.16 provisions of section 1366(b) of the Internal Revenue Code, would be allocable to this  
2.17 state under section 290.17, 290.191, or 290.20 if realized by the individual directly from  
2.18 the source from which realized by the corporation; or

2.19 (6) taxed to the individual under the Internal Revenue Code (or not taxed under the  
2.20 Internal Revenue Code by reason of its character but of a character which is taxable under  
2.21 this chapter) in the individual's capacity as the sole member of a limited liability company  
2.22 that is disregarded for federal income tax purposes, with income allocable to this state  
2.23 under section 290.17, 290.191, or 290.20, as though realized by the individual directly  
2.24 from the source from which it was realized by the limited liability company.

2.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.26 Sec. 2. Minnesota Statutes 2008, section 290.17, subdivision 2, is amended to read:

2.27 Subd. 2. **Income not derived from conduct of a trade or business.** The income of  
2.28 a taxpayer subject to the allocation rules that is not derived from the conduct of a trade or  
2.29 business must be assigned in accordance with paragraphs (a) to (f):

2.30 (a)(1) Subject to paragraphs (a)(2) and (a)(3), income from wages as defined in  
2.31 section 3401(a) and (f) of the Internal Revenue Code is assigned to this state if, and to the  
2.32 extent that, the work of the employee is performed within it; all other income from such  
2.33 sources is treated as income from sources without this state.

2.34 Severance pay shall be considered income from labor or personal or professional  
2.35 services.

3.1 (2) In the case of an individual who is a nonresident of Minnesota and who is an  
3.2 athlete or entertainer, income from compensation for labor or personal services performed  
3.3 within this state shall be determined in the following manner:

3.4 (i) The amount of income to be assigned to Minnesota for an individual who is a  
3.5 nonresident salaried athletic team employee shall be determined by using a fraction in  
3.6 which the denominator contains the total number of days in which the individual is under  
3.7 a duty to perform for the employer, and the numerator is the total number of those days  
3.8 spent in Minnesota. For purposes of this paragraph, off-season training activities, unless  
3.9 conducted at the team's facilities as part of a team imposed program, are not included in  
3.10 the total number of duty days. Bonuses earned as a result of play during the regular season  
3.11 or for participation in championship, play-off, or all-star games must be allocated under  
3.12 the formula. Signing bonuses are not subject to allocation under the formula if they are  
3.13 not conditional on playing any games for the team, are payable separately from any other  
3.14 compensation, and are nonrefundable; and

3.15 (ii) The amount of income to be assigned to Minnesota for an individual who is a  
3.16 nonresident, and who is an athlete or entertainer not listed in clause (i), for that person's  
3.17 athletic or entertainment performance in Minnesota shall be determined by assigning to  
3.18 this state all income from performances or athletic contests in this state.

3.19 (3) For purposes of this section, amounts received by a nonresident as "retirement  
3.20 income" as defined in section (b)(1) of the State Income Taxation of Pension Income  
3.21 Act, Public Law 104-95, are not considered income derived from carrying on a trade  
3.22 or business or from wages or other compensation for work an employee performed in  
3.23 Minnesota, and are not taxable under this chapter.

3.24 (b) Income or gains from tangible property located in this state that is not employed  
3.25 in the business of the recipient of the income or gains must be assigned to this state.

3.26 (c) Income or gains from intangible personal property not employed in the business  
3.27 of the recipient of the income or gains must be assigned to this state if the recipient of the  
3.28 income or gains is a resident of this state or is a resident trust or estate.

3.29 Gain on the sale of a partnership interest is allocable to this state in the ratio of the  
3.30 original cost of partnership tangible property in this state to the original cost of partnership  
3.31 tangible property everywhere, determined at the time of the sale. If more than 50 percent  
3.32 of the value of the partnership's assets consists of intangibles, gain or loss from the sale  
3.33 of the partnership interest is allocated to this state in accordance with the sales factor of  
3.34 the partnership for its first full tax period immediately preceding the tax period of the  
3.35 partnership during which the partnership interest was sold.

4.1 Gain on the sale of an interest in a single member limited liability company that  
4.2 is disregarded for federal income tax purposes is allocable to this state as if the single  
4.3 member limited liability company did not exist and the assets of the limited liability  
4.4 company are personally owned by the sole member.

4.5 Gain on the sale of goodwill or income from a covenant not to compete that is  
4.6 connected with a business operating all or partially in Minnesota is allocated to this state  
4.7 to the extent that the income from the business in the year preceding the year of sale was  
4.8 assignable to Minnesota under subdivision 3.

4.9 When an employer pays an employee for a covenant not to compete, the income  
4.10 allocated to this state is in the ratio of the employee's service in Minnesota in the calendar  
4.11 year preceding leaving the employment of the employer over the total services performed  
4.12 by the employee for the employer in that year.

4.13 (d) Income from winnings on a bet made by an individual while in Minnesota is  
4.14 assigned to this state. In this paragraph, "bet" has the meaning given in section 609.75,  
4.15 subdivision 2, as limited by section 609.75, subdivision 3, clauses (1), (2), and (3).

4.16 (e) All items of gross income not covered in paragraphs (a) to (d) and not part of the  
4.17 taxpayer's income from a trade or business shall be assigned to the taxpayer's domicile.

4.18 (f) For the purposes of this section, working as an employee shall not be considered  
4.19 to be conducting a trade or business.

4.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.21 Sec. 3. Minnesota Statutes 2008, section 291.005, subdivision 1, is amended to read:

4.22 Subdivision 1. **Scope.** Unless the context otherwise clearly requires, the following  
4.23 terms used in this chapter shall have the following meanings:

4.24 (1) "Federal gross estate" means the gross estate of a decedent as valued and  
4.25 otherwise determined for federal estate tax purposes by federal taxing authorities pursuant  
4.26 to the provisions of the Internal Revenue Code.

4.27 (2) "Minnesota gross estate" means the federal gross estate of a decedent after (a)  
4.28 excluding therefrom any property included therein which has its situs outside Minnesota,  
4.29 and (b) including therein any property omitted from the federal gross estate which is  
4.30 includable therein, has its situs in Minnesota, and was not disclosed to federal taxing  
4.31 authorities.

4.32 (3) "Personal representative" means the executor, administrator or other person  
4.33 appointed by the court to administer and dispose of the property of the decedent. If there  
4.34 is no executor, administrator or other person appointed, qualified, and acting within this  
4.35 state, then any person in actual or constructive possession of any property having a situs in

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5.1 this state which is included in the federal gross estate of the decedent shall be deemed  
5.2 to be a personal representative to the extent of the property and the Minnesota estate tax  
5.3 due with respect to the property.

5.4 (4) "Resident decedent" means an individual whose domicile at the time of death  
5.5 was in Minnesota.

5.6 (5) "Nonresident decedent" means an individual whose domicile at the time of  
5.7 death was not in Minnesota.

5.8 (6) "Situs of property" means, with respect to real property, the state or country in  
5.9 which it is located; with respect to tangible personal property, the state or country in which  
5.10 it was normally kept or located at the time of the decedent's death; and with respect to  
5.11 intangible personal property, the state or country in which the decedent was domiciled  
5.12 at death. For a nonresident decedent with an ownership interest in a pass-through entity  
5.13 with assets that include real or tangible personal property, situs of the real or tangible  
5.14 personal property is determined as if the pass-through entity does not exist and the real  
5.15 or tangible personal property is personally owned by the decedent. If the pass-through  
5.16 entity is owned by a person or persons in addition to the decedent, ownership of the  
5.17 property is attributed to the decedent in proportion to the decedent's capital ownership  
5.18 share of the pass-through entity.

5.19 (7) "Commissioner" means the commissioner of revenue or any person to whom the  
5.20 commissioner has delegated functions under this chapter.

5.21 (8) "Internal Revenue Code" means the United States Internal Revenue Code of  
5.22 1986, as amended through February 13, 2008.

5.23 (9) "Minnesota adjusted taxable estate" means federal adjusted taxable estate as  
5.24 defined by section 2011(b)(3) of the Internal Revenue Code, increased by the amount of  
5.25 deduction for state death taxes allowed under section 2058 of the Internal Revenue Code.

5.26 (10) "Pass-through entity" includes the following:

5.27 (i) an entity electing S corporation status under section 1362 of the Internal Revenue  
5.28 Code;

5.29 (ii) an entity taxed as a partnership under subchapter K of the Internal Revenue Code;

5.30 (iii) a single member limited liability company or similar entity, regardless of  
5.31 whether it is taxed as an association or is disregarded for federal income tax purposes  
5.32 under Code of Federal Regulations, title 26, section 301.7701-3; or

5.33 (iv) a trust.

5.34 **EFFECTIVE DATE.** This section is effective for estates of decedents dying after  
5.35 December 31, 2008.