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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2114

03/11/2021 Authored by Marquart and Lislegard 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; modifying individual income taxes and corporate franchise
1.3 taxes; creating an addition for certain previously taxed income; deeming certain
1.4 foreign corporations to be domestic corporations; amending Minnesota Statutes
1.5 2020, section 290.17, by adding subdivisions.

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

1.7 Section 1. Minnesota Statutes 2020, section 290.17, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 4a. Controlled foreign corporations. (a) For purposes of applying subdivision
1.10 4, a controlled foreign corporation as defined in section 957 of the Internal Revenue Code
1.11 is deemed to be a domestic corporation if:

1.12 (1) a United States shareholder of a controlled foreign corporation is required for the
1.13 taxable year to include in gross income the shareholder's global intangible low-taxed income
1.14 under section 951A of the Internal Revenue Code; and

1.15 (2) the commissioner determines that the controlled foreign corporation is a member of
1.16 a unitary group.

1.17 (b) The determination made by the commissioner under paragraph (a), clause (2), is
1.18 prima facie valid. The taxpayer subject to this determination has the burden of establishing
1.19 the determination's incorrectness in any related action or proceeding.

1.20 (c) For purposes of imposing a tax under this chapter, the federal taxable income of a
1.21 controlled foreign corporation deemed to be a domestic corporation under this subdivision
1.22 must be computed as follows:

2.1 (1) a profit and loss statement must be prepared in the currency in which the books of
2.2 account of the controlled foreign corporation are regularly maintained;

2.3 (2) except as determined by the commissioner, adjustments must be made to the profit
2.4 and loss statement to conform the statement to the accounting principles generally accepted
2.5 in the United States for the preparation of those statements;

2.6 (3) adjustments must be made to the profit and loss statement to conform it to the tax
2.7 accounting standards required by the commissioner;

2.8 (4) unless otherwise authorized by the commissioner, the profit and loss statement of
2.9 each member of the combined group, and the apportionment factors related to the combined
2.10 group, whether domestic or foreign, must be converted into the currency in which the parent
2.11 company maintains its books and records; and

2.12 (5) income apportioned to this state must be expressed in United States dollars.

2.13 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
2.14 31, 2020.

2.15 Sec. 2. Minnesota Statutes 2020, section 290.17, is amended by adding a subdivision to
2.16 read:

2.17 Subd. 4b. **Worldwide election.** (a) Taxpayer members of a unitary group, of which one
2.18 or more members are deemed to be domestic corporations under subdivision 4a for the
2.19 taxable year, may elect to determine each of their apportioned shares of the net business
2.20 income or loss of the combined group under a worldwide election. Under the election,
2.21 taxpayer members must take into account the entire income and apportionment factors of
2.22 each member of the unitary group, regardless of the place where a member is incorporated
2.23 or formed. Corporations or other entities incorporated or formed outside of the United States
2.24 are subject to the requirements of subdivision 4a, paragraph (c), in reporting their income.

2.25 (b) A worldwide election is effective only if made on a timely filed, original return for
2.26 the tax year by each member of the unitary group subject to tax under this chapter.

2.27 (c) A worldwide election is binding for and applies to the taxable year it is made and
2.28 for the ten following taxable years.

2.29 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
2.30 31, 2020.

3.1 Sec. 3. Minnesota Statutes 2020, section 290.17, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 4c. **Withdrawal; reinstitution.** (a) The election under subdivision 4b, paragraph
3.4 (a), may be withdrawn:

3.5 (1) after expiration of the ten-year period in subdivision 4b, paragraph (c), provided that
3.6 the withdrawal is made in writing within one year after the expiration of the election; or

3.7 (2) prior to the expiration of the ten-year period, if the taxpayer members:

3.8 (i) file a written withdrawal request with the commissioner;

3.9 (ii) demonstrate that they would experience an extraordinary hardship due to unforeseen
3.10 changes in this state's tax statutes, laws, or policies; and

3.11 (iii) receive written permission from the commissioner approving the withdrawal, which
3.12 the commissioner may grant.

3.13 (b) A withdrawal made under paragraph (a) is binding for ten years. If no withdrawal
3.14 is properly made under paragraph (a), clause (1), the worldwide election is binding for an
3.15 additional ten taxable years. If the commissioner grants written permission to withdraw
3.16 under paragraph (a), clause (2), the commissioner must impose any requirement deemed
3.17 necessary to prevent evasion of tax or to clearly reflect income for the election period before
3.18 or after withdrawal.

3.19 (c) Notwithstanding the requirement binding withdrawal for ten years under paragraph
3.20 (b), the election may be reinstited if the taxpayer members:

3.21 (1) file a written reinstitution request with the commissioner;

3.22 (2) demonstrate that they would experience an extraordinary hardship due to unforeseen
3.23 changes in this state's tax statutes, laws, or policies; and

3.24 (3) receive written permission from the commissioner approving the reinstitution, which
3.25 the commissioner may grant.

3.26 (d) A reinstitution under paragraph (c) is binding for a period of ten years. The withdrawal
3.27 provisions of paragraph (a) apply to a reinstitution under paragraph (c), and the provisions
3.28 of paragraph (c) apply to a reinstitution following a subsequent withdrawal.

3.29 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
3.30 31, 2020.