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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 156

01/17/2019 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; individual income; providing sourcing rules for income of
1.3 nonresident board members; amending Minnesota Statutes 2018, section 290.191,
1.4 subdivision 5.

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

1.6 Section 1. Minnesota Statutes 2018, section 290.191, subdivision 5, is amended to read:

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

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

1.12 (1) interest;

1.13 (2) dividends;

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

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

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

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

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

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

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

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

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

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

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

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

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

3.1 (h) Royalties and other income received for the use of or for the privilege of using
3.2 intangible property, including patents, know-how, formulas, designs, processes, patterns,
3.3 copyrights, trade names, service names, franchises, licenses, contracts, customer lists, or
3.4 similar items, must be attributed to the state in which the property is used by the purchaser.
3.5 If the property is used in more than one state, the royalties or other income must be
3.6 apportioned to this state pro rata according to the portion of use in this state. If the portion
3.7 of use in this state cannot be determined, the royalties or other income must be excluded
3.8 from both the numerator and the denominator. Intangible property is used in this state if the
3.9 purchaser uses the intangible property or the rights therein in the regular course of its business
3.10 operations in this state, regardless of the location of the purchaser's customers.

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

3.17 (j) Receipts from the performance of services must be attributed to the state where the
3.18 services are received. For the purposes of this section, receipts from the performance of
3.19 services provided to a corporation, partnership, or trust may only be attributed to a state
3.20 where it has a fixed place of doing business. If the state where the services are received is
3.21 not readily determinable or is a state where the corporation, partnership, or trust receiving
3.22 the service does not have a fixed place of doing business, the services shall be deemed to
3.23 be received at the location of the office of the customer from which the services were ordered
3.24 in the regular course of the customer's trade or business. If the ordering office cannot be
3.25 determined, the services shall be deemed to be received at the office of the customer to
3.26 which the services are billed. Receipts received as compensation by a nonresident individual
3.27 for the performance of services as a member of a board of directors are attributed to
3.28 Minnesota based on the ratio of the time physically spent in Minnesota providing services
3.29 as a member of that board divided by the time spent everywhere providing services as a
3.30 member of that board.

3.31 (k) For the purposes of this subdivision and subdivision 6, paragraph (l), receipts from
3.32 management, distribution, or administrative services performed by a corporation or trust
3.33 for a fund of a corporation or trust regulated under United States Code, title 15, sections
3.34 80a-1 through 80a-64, must be attributed to the state where the shareholder of the fund
3.35 resides. Under this paragraph, receipts for services attributed to shareholders are determined

4.1 on the basis of the ratio of: (1) the average of the outstanding shares in the fund owned by
4.2 shareholders residing within Minnesota at the beginning and end of each year; and (2) the
4.3 average of the total number of outstanding shares in the fund at the beginning and end of
4.4 each year. Residence of the shareholder, in the case of an individual, is determined by the
4.5 mailing address furnished by the shareholder to the fund. Residence of the shareholder,
4.6 when the shares are held by an insurance company as a depositor for the insurance company
4.7 policyholders, is the mailing address of the policyholders. In the case of an insurance
4.8 company holding the shares as a depositor for the insurance company policyholders, if the
4.9 mailing address of the policyholders cannot be determined by the taxpayer, the receipts
4.10 must be excluded from both the numerator and denominator. Residence of other shareholders
4.11 is the mailing address of the shareholder.

4.12 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
4.13 31, 2018.