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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1849

02/28/2019 Authored by Hornstein
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; expanding the definition of domestic
1.3 corporations to include certain foreign corporations incorporated in or doing
1.4 business in tax havens; amending Minnesota Statutes 2018, sections 290.01,
1.5 subdivision 5, by adding a subdivision; 290.17, subdivision 4.

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

1.7 Section 1. Minnesota Statutes 2018, section 290.01, subdivision 5, is amended to read:

1.8 Subd. 5. Domestic corporation. The term "domestic" when applied to a corporation
1.9 means a corporation:

1.10 (1) created or organized in the United States, or under the laws of the United States or
1.11 of any state, the District of Columbia, or any political subdivision of any of the foregoing
1.12 but not including the Commonwealth of Puerto Rico, or any possession of the United States;

1.13 or

1.14 (2) which qualifies as a DISC, as defined in section 992(a) of the Internal Revenue Code;

1.15 (3) which is incorporated in a tax haven;

1.16 (4) which is engaged in activity in a tax haven sufficient for the tax haven to impose a
1.17 net income tax under United States constitutional standards and section 290.015, and which
1.18 reports that 20 percent or more of its income is attributable to business in the tax haven; or

1.19 (5) which has the average of its property, payroll, and sales factors, as defined under
1.20 section 290.191, within the 50 states of the United States and the District of Columbia of
1.21 20 percent or more.

2.1 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
2.2 31, 2018.

2.3 Sec. 2. Minnesota Statutes 2018, section 290.01, is amended by adding a subdivision to
2.4 read:

2.5 Subd. 5c. **Tax haven.** (a) "Tax haven" means the following foreign jurisdictions, unless
2.6 the listing of the jurisdiction does not apply under paragraph (b):

2.7 (1) Anguilla;

2.8 (2) Antigua and Barbuda;

2.9 (3) Aruba;

2.10 (4) Bahamas;

2.11 (5) Bahrain;

2.12 (6) Belize;

2.13 (7) Bermuda;

2.14 (8) British Virgin Islands;

2.15 (9) Cayman Islands;

2.16 (10) Cook Islands;

2.17 (11) Costa Rica;

2.18 (12) Cyprus;

2.19 (13) Dominica;

2.20 (14) Gibraltar;

2.21 (15) Grenada;

2.22 (16) Guernsey-Sark-Alderney;

2.23 (17) Isle of Man;

2.24 (18) Jersey;

2.25 (19) Jordan;

2.26 (20) Lebanon;

2.27 (21) Liberia;

2.28 (22) Liechtenstein;

- 3.1 (23) Malta;
- 3.2 (24) Marshall Islands;
- 3.3 (25) Monaco;
- 3.4 (26) Nauru;
- 3.5 (27) Netherlands Antilles;
- 3.6 (28) Niue;
- 3.7 (29) Panama;
- 3.8 (30) St. Kitts and Nevis;
- 3.9 (31) St. Lucia;
- 3.10 (32) St. Vincent and the Grenadines;
- 3.11 (33) Samoa;
- 3.12 (34) Turks and Caicos; and
- 3.13 (35) Vanuatu.

3.14 (b) A foreign jurisdiction's listing under paragraph (a) does not apply to the first taxable
 3.15 year after the United States enters into a tax treaty or other agreement with the foreign
 3.16 jurisdiction that provides for prompt, obligatory, and automatic exchange of information
 3.17 with the United States government relevant to enforcing the provisions of federal tax laws
 3.18 applicable to both individuals and all corporations and other entities and the treaty or other
 3.19 agreement was in effect for the taxable year.

3.20 **EFFECTIVE DATE.** This section is effective for returns filed for taxable years
 3.21 beginning after December 31, 2018.

3.22 Sec. 3. Minnesota Statutes 2018, section 290.17, subdivision 4, is amended to read:

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

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

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

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

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

4.22 (f)(1) The net income and apportionment factors under section 290.191 or 290.20 of
4.23 foreign corporations and other foreign entities which are part of a unitary business shall not
4.24 be included in the net income or the apportionment factors of the unitary business; ~~except~~
4.25 ~~that.~~

4.26 (2) Notwithstanding clause (1), the income and apportionment factors of a foreign entity,
4.27 other than an entity treated as a C corporation for federal income tax purposes, that are
4.28 included in the federal taxable income, as defined in section 63 of the Internal Revenue
4.29 Code as amended through the date named in section 290.01, subdivision 19, of a domestic
4.30 corporation, domestic entity, or individual must be included in determining net income and
4.31 the factors to be used in the apportionment of net income pursuant to section 290.191 or
4.32 290.20.

5.1 (3) A foreign corporation or other foreign entity which is not included on a combined
5.2 report and which is required to file a return under this chapter shall file on a separate return
5.3 basis.

5.4 (4) The legislature intends that the provisions of clause (1) and paragraph (g), clause
5.5 (1), are not severable from the provisions of section 290.01, subdivision 5, clauses (4) to
5.6 (6), and if any of those provisions are found to be unconstitutional, the provisions of this
5.7 paragraph are void for the respective taxable years.

5.8 (g)(1) For purposes of determining the net income of a unitary business and the factors
5.9 to be used in the apportionment of net income pursuant to section 290.191 or 290.20, there
5.10 must be included only the income and apportionment factors of domestic corporations or
5.11 other domestic entities that are determined to be part of the unitary business pursuant to this
5.12 subdivision, notwithstanding that foreign corporations or other foreign entities might be
5.13 included in the unitary business; ~~except that.~~

5.14 (2) Notwithstanding clause (1), the income and apportionment factors of a foreign entity,
5.15 other than an entity treated as a C corporation for federal income tax purposes, that is
5.16 included in the federal taxable income, as defined in section 63 of the Internal Revenue
5.17 Code as amended through the date named in section 290.01, subdivision 19, of a domestic
5.18 corporation, domestic entity, or individual must be included in determining net income and
5.19 the factors to be used in the apportionment of net income pursuant to section 290.191 or
5.20 290.20.

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

6.22 **EFFECTIVE DATE.** This section is effective for returns filed for taxable years
6.23 beginning after December 31, 2018.