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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2886

03/14/2012 Authored by Marquart  
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; modifying provisions related to foreign  
1.3 operating corporations; amending Minnesota Statutes 2010, sections 290.01,  
1.4 subdivision 19d; 290.17, subdivision 4; 290.21, subdivision 4.

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

1.6 Section 1. Minnesota Statutes 2010, section 290.01, subdivision 19d, is amended to  
1.7 read:

1.8 Subd. 19d. **Corporations; modifications decreasing federal taxable income.** For  
1.9 corporations, there shall be subtracted from federal taxable income after the increases  
1.10 provided in subdivision 19c:

1.11 (1) the amount of foreign dividend gross-up added to gross income for federal  
1.12 income tax purposes under section 78 of the Internal Revenue Code;

1.13 (2) the amount of salary expense not allowed for federal income tax purposes due to  
1.14 claiming the work opportunity credit under section 51 of the Internal Revenue Code;

1.15 (3) any dividend (not including any distribution in liquidation) paid within the  
1.16 taxable year by a national or state bank to the United States, or to any instrumentality of  
1.17 the United States exempt from federal income taxes, on the preferred stock of the bank  
1.18 owned by the United States or the instrumentality;

1.19 (4) amounts disallowed for intangible drilling costs due to differences between  
1.20 this chapter and the Internal Revenue Code in taxable years beginning before January  
1.21 1, 1987, as follows:

1.22 (i) to the extent the disallowed costs are represented by physical property, an amount  
1.23 equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09,  
1.24 subdivision 7, subject to the modifications contained in subdivision 19e; and

2.1 (ii) to the extent the disallowed costs are not represented by physical property, an  
2.2 amount equal to the allowance for cost depletion under Minnesota Statutes 1986, section  
2.3 290.09, subdivision 8;

2.4 (5) the deduction for capital losses pursuant to sections 1211 and 1212 of the  
2.5 Internal Revenue Code, except that:

2.6 (i) for capital losses incurred in taxable years beginning after December 31, 1986,  
2.7 capital loss carrybacks shall not be allowed;

2.8 (ii) for capital losses incurred in taxable years beginning after December 31, 1986,  
2.9 a capital loss carryover to each of the 15 taxable years succeeding the loss year shall be  
2.10 allowed;

2.11 (iii) for capital losses incurred in taxable years beginning before January 1, 1987, a  
2.12 capital loss carryback to each of the three taxable years preceding the loss year, subject to  
2.13 the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed; and

2.14 (iv) for capital losses incurred in taxable years beginning before January 1, 1987,  
2.15 a capital loss carryover to each of the five taxable years succeeding the loss year to the  
2.16 extent such loss was not used in a prior taxable year and subject to the provisions of  
2.17 Minnesota Statutes 1986, section 290.16, shall be allowed;

2.18 (6) an amount for interest and expenses relating to income not taxable for federal  
2.19 income tax purposes, if (i) the income is taxable under this chapter and (ii) the interest and  
2.20 expenses were disallowed as deductions under the provisions of section 171(a)(2), 265 or  
2.21 291 of the Internal Revenue Code in computing federal taxable income;

2.22 (7) in the case of mines, oil and gas wells, other natural deposits, and timber for  
2.23 which percentage depletion was disallowed pursuant to subdivision 19c, clause (9), a  
2.24 reasonable allowance for depletion based on actual cost. In the case of leases the deduction  
2.25 must be apportioned between the lessor and lessee in accordance with rules prescribed  
2.26 by the commissioner. In the case of property held in trust, the allowable deduction must  
2.27 be apportioned between the income beneficiaries and the trustee in accordance with the  
2.28 pertinent provisions of the trust, or if there is no provision in the instrument, on the basis  
2.29 of the trust's income allocable to each;

2.30 (8) for certified pollution control facilities placed in service in a taxable year  
2.31 beginning before December 31, 1986, and for which amortization deductions were elected  
2.32 under section 169 of the Internal Revenue Code of 1954, as amended through December  
2.33 31, 1985, an amount equal to the allowance for depreciation under Minnesota Statutes  
2.34 1986, section 290.09, subdivision 7;

2.35 (9) amounts included in federal taxable income that are due to refunds of income,  
2.36 excise, or franchise taxes based on net income or related minimum taxes paid by the

3.1 corporation to Minnesota, another state, a political subdivision of another state, the  
3.2 District of Columbia, or a foreign country or possession of the United States to the extent  
3.3 that the taxes were added to federal taxable income under section 290.01, subdivision 19c,  
3.4 clause (1), in a prior taxable year;

3.5 (10) ~~80~~ 62 percent for taxable years beginning after December 31, 2011, and before  
3.6 January 1, 2013, and 39 percent for taxable years beginning after December 31, 2012,  
3.7 of royalties, fees, or other like income accrued or received from a foreign operating  
3.8 corporation or a foreign corporation which is part of the same unitary business as the  
3.9 receiving corporation, unless the income resulting from such payments or accruals  
3.10 is income from sources within the United States as defined in subtitle A, chapter 1,  
3.11 subchapter N, part 1, of the Internal Revenue Code;

3.12 (11) income or gains from the business of mining as defined in section 290.05,  
3.13 subdivision 1, clause (a), that are not subject to Minnesota franchise tax;

3.14 (12) the amount of disability access expenditures in the taxable year which are not  
3.15 allowed to be deducted or capitalized under section 44(d)(7) of the Internal Revenue Code;

3.16 (13) the amount of qualified research expenses not allowed for federal income tax  
3.17 purposes under section 280C(c) of the Internal Revenue Code, but only to the extent that  
3.18 the amount exceeds the amount of the credit allowed under section 290.068;

3.19 (14) the amount of salary expenses not allowed for federal income tax purposes due  
3.20 to claiming the Indian employment credit under section 45A(a) of the Internal Revenue  
3.21 Code;

3.22 (15) for a corporation whose foreign sales corporation, as defined in section 922  
3.23 of the Internal Revenue Code, constituted a foreign operating corporation during any  
3.24 taxable year ending before January 1, 1995, and a return was filed by August 15, 1996,  
3.25 claiming the deduction under section 290.21, subdivision 4, paragraph (c), for income  
3.26 received from the foreign operating corporation, an amount equal to 1.23 multiplied by the  
3.27 amount of income excluded under section 114 of the Internal Revenue Code, provided  
3.28 the income is not income of a foreign operating company;

3.29 (16) any decrease in subpart F income, as defined in section 952(a) of the Internal  
3.30 Revenue Code, for the taxable year when subpart F income is calculated without regard to  
3.31 the provisions of Division C, title III, section 303(b) of Public Law 110-343;

3.32 (17) in each of the five tax years immediately following the tax year in which an  
3.33 addition is required under subdivision 19c, clause (15), an amount equal to one-fifth of  
3.34 the delayed depreciation. For purposes of this clause, "delayed depreciation" means the  
3.35 amount of the addition made by the taxpayer under subdivision 19c, clause (15). The  
3.36 resulting delayed depreciation cannot be less than zero;

4.1 (18) in each of the five tax years immediately following the tax year in which an  
4.2 addition is required under subdivision 19c, clause (16), an amount equal to one-fifth of  
4.3 the amount of the addition; and

4.4 (19) to the extent included in federal taxable income, discharge of indebtedness  
4.5 income resulting from reacquisition of business indebtedness included in federal taxable  
4.6 income under section 108(i) of the Internal Revenue Code. This subtraction applies only  
4.7 to the extent that the income was included in net income in a prior year as a result of the  
4.8 addition under section 290.01, subdivision 19c, clause (25).

4.9 **EFFECTIVE DATE.** This section is effective for taxable years beginning after  
4.10 December 31, 2011.

4.11 Sec. 2. Minnesota Statutes 2010, section 290.17, subdivision 4, is amended to read:

4.12 Subd. 4. **Unitary business principle.** (a) If a trade or business conducted wholly  
4.13 within this state or partly within and partly without this state is part of a unitary business,  
4.14 the entire income of the unitary business is subject to apportionment pursuant to section  
4.15 290.191. Notwithstanding subdivision 2, paragraph (c), none of the income of a unitary  
4.16 business is considered to be derived from any particular source and none may be allocated  
4.17 to a particular place except as provided by the applicable apportionment formula. The  
4.18 provisions of this subdivision do not apply to business income subject to subdivision 5,  
4.19 income of an insurance company, or income of an investment company determined under  
4.20 section 290.36.

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

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

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

5.1 (e) Unity of ownership is not deemed to exist when a corporation is involved unless  
5.2 that corporation is a member of a group of two or more business entities and more than 50  
5.3 percent of the voting stock of each member of the group is directly or indirectly owned  
5.4 by a common owner or by common owners, either corporate or noncorporate, or by one  
5.5 or more of the member corporations of the group. For this purpose, the term "voting  
5.6 stock" shall include membership interests of mutual insurance holding companies formed  
5.7 under section 66A.40.

5.8 (f) The net income and apportionment factors under section 290.191 or 290.20 of  
5.9 foreign corporations and other foreign entities which are part of a unitary business shall  
5.10 not be included in the net income or the apportionment factors of the unitary business.  
5.11 A foreign corporation or other foreign entity which is required to file a return under this  
5.12 chapter shall file on a separate return basis. The net income and apportionment factors  
5.13 under section 290.191 or 290.20 of foreign operating corporations shall not be included in  
5.14 the net income or the apportionment factors of the unitary business except as provided in  
5.15 paragraph (g).

5.16 (g) The adjusted net income of a foreign operating corporation shall be deemed to  
5.17 be paid as a dividend on the last day of its taxable year to each shareholder thereof, in  
5.18 proportion to each shareholder's ownership, with which such corporation is engaged in  
5.19 a unitary business. Such deemed dividend shall be treated as a dividend under section  
5.20 290.21, subdivision 4, paragraph (c).

5.21 Dividends actually paid by a foreign operating corporation to a corporate shareholder  
5.22 which is a member of the same unitary business as the foreign operating corporation shall  
5.23 be eliminated from the net income of the unitary business in preparing a combined report  
5.24 for the unitary business. The adjusted net income of a foreign operating corporation  
5.25 shall be its net income adjusted as follows:

5.26 (1) any taxes paid or accrued to a foreign country, the commonwealth of Puerto  
5.27 Rico, or a United States possession or political subdivision of any of the foregoing shall  
5.28 be a deduction; and

5.29 (2) the subtraction from federal taxable income for payments received from foreign  
5.30 corporations or foreign operating corporations under section 290.01, subdivision 19d,  
5.31 clause (10), shall not be allowed.

5.32 If a foreign operating corporation incurs a net loss, neither income nor deduction  
5.33 from that corporation shall be included in determining the net income of the unitary  
5.34 business.

5.35 (h) For purposes of determining the net income of a unitary business and the factors  
5.36 to be used in the apportionment of net income pursuant to section 290.191 or 290.20, there

6.1 must be included only the income and apportionment factors of domestic corporations or  
6.2 other domestic entities other than foreign operating corporations that are determined to  
6.3 be part of the unitary business pursuant to this subdivision, notwithstanding that foreign  
6.4 corporations or other foreign entities might be included in the unitary business.

6.5 (i) Deductions for expenses, interest, or taxes otherwise allowable under this chapter  
6.6 that are connected with or allocable against dividends, deemed dividends described  
6.7 in paragraph (g), or royalties, fees, or other like income described in section 290.01,  
6.8 subdivision 19d, clause (10), shall not be disallowed.

6.9 (j) Each corporation or other entity, except a sole proprietorship, that is part of a  
6.10 unitary business must file combined reports as the commissioner determines. On the  
6.11 reports, all intercompany transactions between entities included pursuant to paragraph  
6.12 (h) must be eliminated and the entire net income of the unitary business determined in  
6.13 accordance with this subdivision is apportioned among the entities by using each entity's  
6.14 Minnesota factors for apportionment purposes in the numerators of the apportionment  
6.15 formula and the total factors for apportionment purposes of all entities included pursuant  
6.16 to paragraph (h) in the denominators of the apportionment formula.

6.17 (k) If a corporation has been divested from a unitary business and is included in a  
6.18 combined report for a fractional part of the common accounting period of the combined  
6.19 report:

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

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

6.24 **EFFECTIVE DATE.** This section is effective for taxable years beginning after  
6.25 December 31, 2011.

6.26 Sec. 3. Minnesota Statutes 2010, section 290.21, subdivision 4, is amended to read:

6.27 Subd. 4. **Dividends received from another corporation.** (a)(1) Eighty percent  
6.28 of dividends received by a corporation during the taxable year from another corporation,  
6.29 in which the recipient owns 20 percent or more of the stock, by vote and value, not  
6.30 including stock described in section 1504(a)(4) of the Internal Revenue Code when the  
6.31 corporate stock with respect to which dividends are paid does not constitute the stock in  
6.32 trade of the taxpayer or would not be included in the inventory of the taxpayer, or does not  
6.33 constitute property held by the taxpayer primarily for sale to customers in the ordinary  
6.34 course of the taxpayer's trade or business, or when the trade or business of the taxpayer

7.1 does not consist principally of the holding of the stocks and the collection of the income  
7.2 and gains therefrom; and

7.3 (2)(i) the remaining 20 percent of dividends if the dividends received are the stock in  
7.4 an affiliated company transferred in an overall plan of reorganization and the dividend  
7.5 is eliminated in consolidation under Treasury Department Regulation 1.1502-14(a), as  
7.6 amended through December 31, 1989;

7.7 (ii) the remaining 20 percent of dividends if the dividends are received from a  
7.8 corporation which is subject to tax under section 290.36 and which is a member of an  
7.9 affiliated group of corporations as defined by the Internal Revenue Code and the dividend  
7.10 is eliminated in consolidation under Treasury Department Regulation 1.1502-14(a), as  
7.11 amended through December 31, 1989, or is deducted under an election under section  
7.12 243(b) of the Internal Revenue Code; or

7.13 (iii) the remaining 20 percent of the dividends if the dividends are received from a  
7.14 property and casualty insurer as defined under section 60A.60, subdivision 8, which is a  
7.15 member of an affiliated group of corporations as defined by the Internal Revenue Code  
7.16 and either: (A) the dividend is eliminated in consolidation under Treasury Regulation  
7.17 1.1502-14(a), as amended through December 31, 1989; or (B) the dividend is deducted  
7.18 under an election under section 243(b) of the Internal Revenue Code.

7.19 (b) Seventy percent of dividends received by a corporation during the taxable year  
7.20 from another corporation in which the recipient owns less than 20 percent of the stock,  
7.21 by vote or value, not including stock described in section 1504(a)(4) of the Internal  
7.22 Revenue Code when the corporate stock with respect to which dividends are paid does not  
7.23 constitute the stock in trade of the taxpayer, or does not constitute property held by the  
7.24 taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or  
7.25 business, or when the trade or business of the taxpayer does not consist principally of the  
7.26 holding of the stocks and the collection of income and gain therefrom.

7.27 (c) 62 percent for taxable years beginning after December 31, 2011, and before  
7.28 January 1, 2013, and 39 percent for taxable years beginning after December 31, 2012, of  
7.29 dividends deemed to be paid from a foreign operating corporation under section 290.17,  
7.30 subdivision 4, paragraph (g).

7.31 ~~(e)~~ (d) The dividend deduction provided in this subdivision shall be allowed only  
7.32 with respect to dividends that are included in a corporation's Minnesota taxable net  
7.33 income for the taxable year.

7.34 The dividend deduction provided in this subdivision does not apply to a dividend  
7.35 from a corporation which, for the taxable year of the corporation in which the distribution

8.1 is made or for the next preceding taxable year of the corporation, is a corporation exempt  
8.2 from tax under section 501 of the Internal Revenue Code.

8.3 The dividend deduction provided in this subdivision applies to the amount of  
8.4 regulated investment company dividends only to the extent determined under section  
8.5 854(b) of the Internal Revenue Code.

8.6 The dividend deduction provided in this subdivision shall not be allowed with  
8.7 respect to any dividend for which a deduction is not allowed under the provisions of  
8.8 section 246(c) of the Internal Revenue Code.

8.9 ~~(d)~~ (e) If dividends received by a corporation that does not have nexus with  
8.10 Minnesota under the provisions of Public Law 86-272 are included as income on the return  
8.11 of an affiliated corporation permitted or required to file a combined report under section  
8.12 290.17, subdivision 4, or 290.34, subdivision 2, then for purposes of this subdivision the  
8.13 determination as to whether the trade or business of the corporation consists principally  
8.14 of the holding of stocks and the collection of income and gains therefrom shall be made  
8.15 with reference to the trade or business of the affiliated corporation having a nexus with  
8.16 Minnesota.

8.17 ~~(e)~~ (f) The deduction provided by this subdivision does not apply if the dividends are  
8.18 paid by a FSC as defined in section 922 of the Internal Revenue Code.

8.19 ~~(f)~~ (g) If one or more of the members of the unitary group whose income is included  
8.20 on the combined report received a dividend, the deduction under this subdivision for  
8.21 each member of the unitary business required to file a return under this chapter is the  
8.22 product of: (1) 100 percent of the dividends received by members of the group; (2) the  
8.23 percentage allowed pursuant to paragraph (a) ~~or~~, (b), or (c); and (3) the percentage of the  
8.24 taxpayer's business income apportionable to this state for the taxable year under section  
8.25 290.191 or 290.20.

8.26 **EFFECTIVE DATE.** This section is effective for taxable years beginning after  
8.27 December 31, 2011.