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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2256

02/27/2023 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; modifying the pass-through entity tax;
1.3 amending Minnesota Statutes 2022, sections 289A.08, subdivision 7a, as amended;
1.4 289A.382, subdivision 2.

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

1.6 Section 1. Minnesota Statutes 2022, section 289A.08, subdivision 7a, as amended by Laws
1.7 2023, chapter 1, section 3, is amended to read:

1.8 Subd. 7a. Pass-through entity tax. (a) For the purposes of this subdivision, the following
1.9 terms have the meanings given:

1.10 (1) "income" has the meaning given in subdivision 7, paragraph (j), modified by the
1.11 addition provided in section 290.0131, subdivision 5, and the subtraction provided in section
1.12 290.0132, subdivision 3, except that the provisions that apply to a partnership apply to a
1.13 qualifying entity and the provisions that apply to a partner apply to a qualifying owner. The
1.14 income of both a resident and qualifying owner of a qualifying entity that is a partnership
1.15 or limited liability company taxed as a partnership under the Internal Revenue Code is not
1.16 subject to allocation outside this state as provided for resident individuals under section
1.17 290.17, subdivision 1, paragraph (a). The income of a nonresident qualifying owner is of a
1.18 qualifying entity and the income of a resident qualifying owner of a qualifying entity that
1.19 is an S corporation, including a qualified subchapter S subsidiary organized under section
1.20 1361(b)(3)(B) of the Internal Revenue Code, are allocated and assigned to this state as
1.21 provided for nonresident partners and shareholders under sections 290.17, 290.191, and
1.22 290.20;

2.1 (2) "qualifying entity" means a partnership, limited liability company taxed as a
 2.2 partnership or S corporation, or S corporation including a qualified subchapter S subsidiary
 2.3 organized under section 1361(b)(3)(B) of the Internal Revenue Code that has at least one
 2.4 qualifying owner. Qualifying entity does not include a ~~partnership, limited liability company,~~
 2.5 ~~or corporation that has a partnership, limited liability company other than a disregarded~~
 2.6 ~~entity, or corporation as a partner, member, or shareholder~~ publicly traded partnership, as
 2.7 defined in section 7704 of the Internal Revenue Code; and

2.8 (3) "qualifying owner" means:

2.9 (i) a resident or nonresident individual or estate that is a partner, member, or shareholder
 2.10 of a qualifying entity; ~~or~~

2.11 (ii) a resident or nonresident trust that is a shareholder of a qualifying entity that is an
 2.12 S corporation; or

2.13 (iii) a disregarded entity that has a qualifying owner as its single owner.

2.14 (b) For taxable years beginning after December 31, 2020, ~~in which the taxes of a~~
 2.15 ~~qualifying owner are limited under section 164(b)(6)(B) of the Internal Revenue Code~~, a
 2.16 qualifying entity may elect to file a return and pay the pass-through entity tax imposed under
 2.17 paragraph (c). The election:

2.18 (1) must be made on or before the due date or extended due date of the qualifying entity's
 2.19 pass-through entity tax return;

2.20 (2) must exclude partners, members, shareholders, or owners who are not qualifying
 2.21 owners;

2.22 ~~(2)~~ (3) may only be made by qualifying owners who collectively hold more than a 50
 2.23 percent of the ownership interest interests in the qualifying entity held by qualifying owners;

2.24 ~~(3)~~ (4) is binding on all qualifying owners who have an ownership interest in the
 2.25 qualifying entity; and

2.26 ~~(4)~~ (5) once made is irrevocable for the taxable year.

2.27 (c) Subject to the election in paragraph (b), a pass-through entity tax is imposed on a
 2.28 qualifying entity in an amount equal to the sum of the tax liability of each qualifying owner.

2.29 (d) The amount of a qualifying owner's tax liability under paragraph (c) is the amount
 2.30 of the qualifying owner's income multiplied by the highest tax rate for individuals under
 2.31 section 290.06, subdivision 2c. When making this determination:

3.1 (1) nonbusiness deductions, standard deductions, or personal exemptions are not allowed;
3.2 and

3.3 (2) a credit or deduction is allowed only to the extent allowed to the qualifying owner.

3.4 (e) The amount of each credit and deduction used to determine a qualifying owner's tax
3.5 liability under paragraph (d) must also be used to determine that qualifying owner's income
3.6 tax liability under chapter 290.

3.7 (f) This subdivision does not negate the requirement that a qualifying owner pay estimated
3.8 tax if the qualifying owner's tax liability would exceed the requirements set forth in section
3.9 289A.25. The qualifying owner's liability to pay estimated tax on the qualifying owner's
3.10 tax liability as determined under paragraph (d) is, however, satisfied when the qualifying
3.11 entity pays estimated tax in the manner prescribed in section 289A.25 for composite estimated
3.12 tax.

3.13 (g) A qualifying owner's adjusted basis in the interest in the qualifying entity, and the
3.14 treatment of distributions, is determined as if the election to pay the pass-through entity tax
3.15 under paragraph (b) is not made.

3.16 (h) To the extent not inconsistent with this subdivision, for purposes of this chapter, a
3.17 pass-through entity tax return must be treated as a composite return and a qualifying entity
3.18 filing a pass-through entity tax return must be treated as a partnership filing a composite
3.19 return.

3.20 (i) The provisions of subdivision 17 apply to the election to pay the pass-through entity
3.21 tax under this subdivision.

3.22 (j) If a nonresident qualifying owner of a qualifying entity making the election to file
3.23 and pay the tax under this subdivision has no other Minnesota source income, filing of the
3.24 pass-through entity tax return is a return for purposes of subdivision 1, provided that the
3.25 nonresident qualifying owner must not have any Minnesota source income other than the
3.26 income from the qualifying entity, other electing qualifying entities, and other partnerships
3.27 electing to file a composite return under subdivision 7. If it is determined that the nonresident
3.28 qualifying owner has other Minnesota source income, the inclusion of the income and tax
3.29 liability for that owner under this provision will not constitute a return to satisfy the
3.30 requirements of subdivision 1. The tax paid for the qualifying owner as part of the
3.31 pass-through entity tax return is allowed as a payment of the tax by the qualifying owner
3.32 on the date on which the pass-through entity tax return payment was made.

4.1 (k) Once a credit is claimed by a qualifying owner under section 290.06, subdivision
 4.2 40, a qualifying entity cannot receive a refund for tax paid under this subdivision for any
 4.3 amounts claimed under that section by the qualifying owners. Once a credit is claimed under
 4.4 section 290.06, subdivision 40, any refund must be claimed in conjunction with a return
 4.5 filed by the qualifying owner.

4.6 (l) This section expires at the same time and on the same terms as section 164(b)(6)(B)
 4.7 of the Internal Revenue Code, except that the expiration of this section does not affect the
 4.8 commissioner's authority to audit or power of examination and assessments for credits
 4.9 claimed under this section.

4.10 **EFFECTIVE DATE.** This section is effective retroactively for taxable years beginning
 4.11 after December 31, 2021.

4.12 Sec. 2. Minnesota Statutes 2022, section 289A.382, subdivision 2, is amended to read:

4.13 Subd. 2. **Reporting and payment requirements for partnerships and tiered**
 4.14 **partners.** (a) Except for when an audited partnership makes the election in subdivision 3,
 4.15 and except for negative federal adjustments required under federal law taken into account
 4.16 by the partnership in the partnership return for the adjustment or other year, all final federal
 4.17 adjustments of an audited partnership must comply with paragraph (b) and each direct
 4.18 partner of the audited partnership, other than a tiered partner, must comply with paragraph
 4.19 (c).

4.20 (b) No later than 90 days after the final determination date, the audited partnership must:

4.21 (1) file a completed federal adjustments report, including all partner-level information
 4.22 required under section 289A.12, subdivision 3, with the commissioner;

4.23 (2) notify each of its direct partners of their distributive share of the final federal
 4.24 adjustments;

4.25 (3) file an amended composite report for all direct partners who were included in a
 4.26 composite return under section 289A.08, subdivision 7, in the reviewed year, and pay the
 4.27 additional amount that would have been due had the federal adjustments been reported
 4.28 properly as required; ~~and~~

4.29 (4) file amended withholding reports for all direct partners who were or should have
 4.30 been subject to nonresident withholding under section 290.92, subdivision 4b, in the reviewed
 4.31 year, and pay the additional amount that would have been due had the federal adjustments
 4.32 been reported properly as required; and

5.1 (5) file an amended pass-through entity tax report for all direct partners who were
5.2 included in a pass-through entity tax return under section 289A.08, subdivision 7a, in the
5.3 reviewed year, and pay the additional amount that would have been due had the federal
5.4 adjustments been reported properly as required.

5.5 (c) No later than 180 days after the final determination date, each direct partner, other
5.6 than a tiered partner, that is subject to a tax administered under this chapter, other than the
5.7 sales tax, must:

5.8 (1) file a federal adjustments report reporting their distributive share of the adjustments
5.9 reported to them under paragraph (b), clause (2); and

5.10 (2) pay any additional amount of tax due as if the final federal adjustment had been
5.11 properly reported, plus any penalty and interest due under this chapter, and less any credit
5.12 for related amounts paid or withheld and remitted on behalf of the direct partner under
5.13 paragraph (b), clauses (3) and (4).

5.14 **EFFECTIVE DATE.** This section is effective retroactively for taxable years beginning
5.15 after December 31, 2021.