

HOUSE RESEARCH

Bill Summary

FILE NUMBER: H.F. 289
Version: As introduced

DATE: March 7, 2011

Authors: Lenczewski

Subject: Business taxes

Analyst: Joel Michael, joel.michael@house.mn

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd.

Overview

This bill reduces the corporate franchise tax rate from 9.8 percent to 7.5 percent and expands the corporate and individual income tax bases by eliminating or repealing the following:

- The JOBZ, Biotechnology and Health Science Industry Zone, and International Economic Development Zone income exemptions under both taxes
- The special rules for foreign operating corporations or FOCs
- The exclusion for 80 percent of foreign royalties
- The research and development credit
- The credit for transit passes

In addition, the bill requires the income and factors of corporations that are incorporated in or that derive 20 percent of their income from tax haven countries to be included in the combined report of the unitary business. This will subject this income to tax based on the unitary business's Minnesota factors (property, payroll, and sales) under the apportionment formula. The bill requires C corporations to add back to their income all or a portion of Minnesota development subsidies.

These changes are effective beginning for tax year 2011.

- 1 State general tax rate.** Provides that in setting the rate of the state general tax on commercial/industrial property, the commissioner is to ignore the tax capacity of the airport property added by section 2.
Effective date: Property taxes payable in 2012.
- 2 State general tax; airport exemption.** Eliminates the exemption for metropolitan airport commission property from the state general tax. This will subject property at the Minneapolis St. Paul International Airport and the St. Paul Airport (Holman) to the state general tax. The area of these airports will remain "detached" and the property within their borders will not be subject to city or school district property taxes.
Effective date: Property taxes payable in 2012.

- 3 FOCs filing requirement.** Eliminates the exemption for FOCs from the corporate return filing requirement. The bill effectively subjects FOCs to tax on the same basis as other corporations.
- 4 Domestic corporation definitions.** Expands the definition of "domestic corporation" to include the following foreign corporations (i.e., corporations or other entities organized under the laws of a foreign country):
- Incorporated in a tax haven (defined in section 5),
 - Doing sufficient business in a tax haven to be subject to tax by the tax haven and 20 percent or more of its income is attributable to the tax haven, or
 - With 20 percent or more of the average of their property, payroll, and sales in the United States.

Domestic corporations that are part of a unitary business must be included on the combined report. As a result, this will require the income and apportionment factors of these foreign corporations to be reflected in the combined report and will subject them to Minnesota corporate franchise tax. Present Minnesota law excludes all foreign corporations from the combined report, except foreign sales corporations.

Effective date: Tax year 2011.

- 5 Tax haven.** Defines "tax haven" as a list of foreign countries that have been publicly identified by both the Organization of Economic Cooperation and Development (OECD) and by the Internal Revenue Services (based on federal court documents). (Originally, these countries were on the OECD's "black list," but are now on its "gray list" because the countries have agreed to expanded tax information exchanges.) Countries are removed from the list if the United States enters into a tax treaty or similar agreement with the country that provides for sharing tax information with the Internal Revenue Service.

Effective date: Tax year 2011.

- 6 Additions to FTI for corporations.** Repeals the corporate franchise tax additions to federal taxable income for foreign operating corporations' (FOCs) deemed dividends. Sections 12 and 15 repeal FOCs deemed dividend treatment. This provision eliminates the corresponding addition to income for the deemed dividend.

Effective date: Tax year 2011.

- 7 Subtractions from FTI for corporations.** Repeals the subtraction from federal taxable income for foreign royalties.

Effective date: Tax year 2011.

- 8 Corporate exemptions for JOBZ; Minnesota development subsidies.** Repeals the corporate franchise exemptions for the JOBZ, Biotechnology and Health Science Zone, and Internal Economic Development Zone programs. In addition, it imposes the corporate franchise tax on Minnesota development subsidies (defined in section 9).

Effective date: Tax year 2011.

- 9 Minnesota development subsidies.** Defines "Minnesota development subsidies" (added to Minnesota taxable income for corporate franchise tax purposes under section 8). These amounts are defined as the greater of:

- One-half of payments that the taxpayer deducted in computing federal taxable income as business expenses attributable to property taxes or lease payments derived from property taxes (e.g., under a triple net lease that requires the lessee to pay the property taxes) on property that is in a TIF district or abatement project. The property must be subject to a development agreement (for TIF) or derive a benefit from the abatement to be included. (Simply paying property taxes on property located in a TIF district would not qualify, if the property owner or developer did not enter a development agreement related to the TIF district or if the property did not derive a direct benefit from the TIF or abatement expenditures.)
- The amount of payments directly received by the corporation under a development that is funded by tax increments or abatement, but excluding amounts that are reimbursements for pollution cleanup under a removal or remediation plan approved by PCA.

Tax increments for purposes of this definition exclude those from:

- Housing districts
- Soils districts
- Hazardous substance districts

Effective date: Tax year 2011.

- 10 Corporate franchise tax rate.** Reduces the corporate franchise tax rate from 9.8 percent to 7.5 percent.

Effective date: Tax year 2011.

- 11 Corporate franchise; AMT rate.** Reduces the alternative minimum tax rate under the corporate franchise tax from 5.8 percent to 4.5 percent.

Effective date: Tax year 2011.

- 12 FOC deemed dividends.** Eliminates the authority to exclude the income and apportionment factors of FOCs from the combined report and eliminates the deemed dividend deduction for 80 percent of FOC income. In addition, the intention of the legislature is that if the inclusion of foreign corporations treated as domestic corporations under the provisions of sections 4 and 5 is invalid, the legislature intends these provisions to be nonseverable from the exclusion of all foreign corporations from the combined report.

Effective date: Tax year 2011.

- 13 Single sales apportionment.** Provides that the Minnesota share of corporate franchise tax for a multistate corporation will be determined solely based on percentage of the corporation's Minnesota sales to its total sales, effective for tax year 2011. Under present law, single sales apportionment is being phased-in, effective for tax year 2014. The phase-in schedule under present law is shown in the table below:

Tax Year	Sales Factor	Property Factor	Payroll Factor
2010	87%	6.5%	6.5%
2011	90%	5%	5%
2012	93%	3.5%	3.5%

2013	96%	2%	2%
2014 and later	100%	0%	0%

14 Single sales apportionment; financial institutions. Adopts single sales apportionment for financial institutions, effective for tax years 2011.

15 Repealer. Repeals the following provisions:

Statute Section	Description of Provision
290.01, subd. 6b	Definition of foreign operating corporations
290.06, subd. 24	Jobs credit for operator of airline heavy maintenance base
290.06, subd. 28	Transit pass credit
290.06, subd. 29	JOBZ jobs credit
290.06, subd. 30	Biotechnology and health science zone jobs credit
290.06, subd. 31	Biotechnology and health science zone research credit
290.06, subd. 32	International economic development zone jobs credit
290.068	Research and development credit
290.0921, subd. 7	Modification to alternative minimum tax for FOCs
290.191, subd.4	Special apportionment formula for mail order sales companies
469.317	JOBZ income exclusion
469.318	JOBZ jobs credit
469.321 - 469.329	International Economic Development Zone
469.337	Biotechnology and health science zone income exclusion
469.338	Biotechnology and health science zone jobs credit
469.339	Biotechnology and health science zone research credit