HOUSE RESEARCH
Bill Summary

FILE NUMBER: H.F. 37 **DATE:** February 11, 2013
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Subject: Corporate franchise tax – throwback sales rule

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This bill adopts a throwback sales rule in apportioning business income under the corporate franchise and individual income taxes. The main provisions are contained in section 2; sections 1 and 3 make cross reference changes required by section 2's provisions. Section 2 also strikes obsolete language related to Domestic International Sales Corporations, a now-repealed type of corporation under federal law.

The throwback sales rule modifies the definition of the sales factor in two ways:

- **No nexus states.** Sales made to purchasers in another state are treated as Minnesota sales, if the business is not taxable in that state. This occurs if the business does not have sufficient contact with the other state to establish nexus either under federal law (e.g., Public Law 86-272) or the constitution.

- **Sales to the federal government.** Sales made to the United States government are also treated as Minnesota sales, since it is unclear what the destination of these sales is.

In addition, the bill provides for sales of services that the sale is a Minnesota sale only if the greater portion of the service is performed in Minnesota.

By treating these "throw-back" sales as Minnesota sales, the net effect is to allocate more income to Minnesota, increasing the business's Minnesota tax liability. (The theory behind this is to prevent the apportionment formula from apportioning a business's income to a state in which it is not liable to pay tax, preventing "nowhere income.") The change would have little effect on large corporations that have nexus in most of the states in which they make sales or that make few sales to the federal government.

Background

The Uniform Division of Income for Tax Purposes Act (UDITPA) has a throwback rule and states that have adopted UDITPA tend to have throwback rules. The table below shows the rules in other states.

Throwback Sales Rules in State Corporate Taxes		
	Throwback rule for sales to:	
State	**Federal government**	**No nexus state destinations**
Alabama	X	X
Alaska	X	X
Arizona		
Arkansas	X	X
California	X	X
Colorado	If taxpayer elects MTC apportionment	If taxpayer elects MTC apportionment
Connecticut		
Delaware		
District of Columbia	X	X
Florida		
Georgia		
Hawaii	X	X
Idaho	X	X
Illinois	X[1]	X4
Indiana	X	X
Iowa		
Kansas	X	X
Kentucky	X	
Louisiana		
Maine	X	Throw-out rule
Maryland		
Massachusetts		
Michigan		
Minnesota		
Mississippi	X	X
Missouri	If taxpayer elects MTC apportionment	If taxpayer elects MTC apportionment
Montana	X	X
Nebraska		
Nevada	No tax using sales apportionment	

[1] Does not apply to shipments of newspapers, books, and periodicals.

Throwback Sales Rules in State Corporate Taxes		
	Throwback rule for sales to:	
State	**Federal government**	**No nexus state destinations**
New Hampshire	X	X
New Jersey		Throw-out rule
New Mexico	X	X
New York		
North Carolina		
North Dakota	X	X
Ohio		
Oklahoma	X	X
Oregon	X	X
Pennsylvania		
Rhode Island		Throw-out rule
South Carolina	X	X
South Dakota	No tax using sales apportionment	
Tennessee	X	
Texas		
Utah	X	X
Vermont	X	X
Virginia		
Washington	No tax using sales apportionment	
West Virginia		Throw-out rule
Wisconsin	X	X
Wyoming	No tax using sales apportionment	
Source: *CCH State Tax Guide*		

Effective date: Tax year 2013