HOUSE RESEARCH
Bill Summary

FILE NUMBER: H.F. 1440 **DATE:** March 26, 2013
Version: As introduced

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Subject: Corporate franchise tax – definition of domestic corporation

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Overview

This 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. The bill defines tax havens as a list of foreign countries with low tax rates and other favorable tax provisions for corporate taxpayers. By treating these entities as domestic corporations, the bill will subject their income to tax based on the unitary business's Minnesota factors (property, payroll, and sales) under the apportionment formula. These changes are effective beginning for tax year 2013.

Section

1 **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 2);
- 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

Section

corporate franchise tax. Present Minnesota law excludes all foreign corporations from the combined report, except foreign sales corporations.

2 **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.) The following countries qualify under the bill:

Anguilla	Jordan
Antigua and Barbuda	Lebanon
Aruba	Liberia
Bahamas	Liechtenstein
Bahrain	Malta
Belize	Marshall Islands
Bermuda	Monaco
British Virgin Islands	Nauru
Cayman Islands	Netherlands Antilles
Cook Islands	Niue
Costa Rica	Panama
Cyprus	St. Kitts and Nevis
Dominica	St. Lucia
Gibraltar	St. Vincent and Grenadines
Grenada	Samoa
Guernsey-Sark-Alderney	Turks and Caicos
Isle Mann	Vanuatu
Jersey	Jordan

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 that applies to individuals and all corporations (e.g., a tax agreement relating only to insurance companies would not qualify).

3 **Nonseverable.** States the legislature intends that if the inclusion of foreign corporations treated as domestic corporations under the provisions of sections 1 and 2 is invalid, these provisions are nonseverable from the exclusion of all foreign corporations from the combined report.