HOUSE RESEARCH

Bill Summary

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Subject: Corporate franchise tax—captive insurance companies

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Overview

This bill modifies the 2017 legislation that imposed corporate franchise tax on certain captive insurance companies. It replaces the 2017 provision by defining the companies subject to taxation as insurers that satisfy two criteria, each of which can met in two different ways:

- The company either (1) is explicitly licensed by a state as a captive or (2) derives 80 percent or more of its premiums from insurance covering other members of the unitary group; AND
- The company either (1) derives half or more of its gross receipts from items other than insurance premiums or (2) pays an effective tax rate of 0.25 percent or less in insurance premiums or similar special state insurance taxes.

The 2017 legislation, by contrast, did not directly define captive insurance companies, but provided that the corporate franchise tax exemption for insurance companies was limited to companies licensed in Minnesota or in a state that imposes retaliatory taxes on Minnesota companies or their agents. This effectively took away the exemption from all companies domiciled in states without retaliatory taxes or that provide that their retaliatory taxes do not apply to Minnesota insurers (Minnesota has adopted reciprocal nonretaliation so this includes states with similar reciprocal nonretaliation laws).

The changes are effective retroactively to tax year 2017 (the same time the 2017 changes were effective).

Section

1 **Financial institution.** Modifies the definition of a financial institution for corporate franchise tax purposes to eliminate the requirement that exempt insurance companies must be subject to Minnesota insurance premiums taxation. This will allow out-of-state insurers who do not write coverage on Minnesota risks (and, thus, are not subject to the Minnesota premiums tax) to qualify as insurance companies that are exempt from corporate franchise tax.

Effective date: Retroactively to tax year 2017

2 **Disqualified captive insurance company.** Defines a "disqualified captive insurance company" for corporate franchise tax purposes. See the overview for a description of the rules for determining whether an insurance company is a disqualified captive. Premiums (used in the definition) are defined by reference to federal law, but exclude premiums that are of types that are exempt from the Minnesota insurance premiums tax (e.g., return premiums or reinsurance premiums).

Disqualified captives are subject to the corporate franchise tax (other insurance companies are exempt) and must include their income and apportionment factors on the combined return of a unitary business of which they are a part.

Effective date: Retroactively to tax year 2017

3 **Exempt entities.** Modifies the statutory definition of insurance companies that are exempt from corporate franchise tax to incorporate section 2's definition of disqualified captive insurance companies (i.e., those which are not exempt insurance companies).

Effective date: Retroactively to tax year 2017

4 **Combined returns.** Modifies the combined return statute to incorporate the new definition of disqualified captive insurance companies—specifically that these captives, including ones incorporated in a foreign country, must include their income and apportionment factors in the combined report. The 2017 tax bill's definition of taxable captives is repealed, since it is replaced by section 2's definition.

Effective date: Retroactively to tax year 2017