MN HOUSE RESEARCH

Bill Summary

H.F. 1822

As amended (H1822A1)

Subject	Throwback rule
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Date	March 4, 2019

Overview

This bill adopts a throwback sales rule in apportioning business income under the corporate franchise and individual income taxes.

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

By treating these "throwback" 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.

Summary

Section	Description
1	**Determination of sales factor.** Paragraph (b) defines which sales are made within the state for purposes of determining the sales factor in the apportionment formula. Section 2 adds a new clause to this paragraph that would include sales of property shipped from a location in this state to a

Section	Description
	purchaser that is the United States government or that is not taxed in the state of the purchaser in the definition of sales made within the state. Paragraph (j) provides the rule for apportioning sales of services. This paragraph is amended to include services that are not taxable in the state where they are purchased, if the greater portion of the service is performed in Minnesota.