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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 2058

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The bill was read for the first time and referred to the Committee on Taxes

A bill for an act

relating to taxation; allowing an election to include foreign entities in the combined report; repealing foreign operating corporations and the subtraction for foreign royalties; modifying the dividend deduction for certain foreign dividends; amending Minnesota Statutes 2006, sections 289A.08, subdivision 3; 290.01, subdivisions 5, 5a, 19c, 19d; 290.17, subdivision 4, by adding a subdivision; 290.191, subdivision 5; 290.21, subdivision 4; repealing Minnesota Statutes 2006, sections 290.01, subdivision 6b; 290.0921, subdivision 7.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 289A.08, subdivision 3, is amended to read:

Subd. 3. Corporations. A corporation that is subject to the state's jurisdiction to tax under section 290.014, subdivision 5, must file a return, except that a foreign operating corporation as defined in section 290.01, subdivision 6b, is not required to file a return.

The commissioner shall adopt rules for the filing of one return on behalf of the members of an affiliated group of corporations that are required to file a combined report. All members of an affiliated group that are required to file a combined report must file one return on behalf of the members of the group under rules adopted by the commissioner. If a corporation claims on a return that it has paid tax in excess of the amount of taxes lawfully due, that corporation must include on that return information necessary for payment of the tax in excess of the amount lawfully due by electronic means.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2006.

Sec. 2. Minnesota Statutes 2006, section 290.01, subdivision 5, is amended to read:

2.1 Subd. 5. **Domestic corporation.** The term "domestic" when applied to a corporation
2.2 means a corporation:

2.3 (1) created or organized in the United States, or under the laws of the United States
2.4 or of any state, the District of Columbia, or any political subdivision of any of the
2.5 foregoing but not including the Commonwealth of Puerto Rico, or any possession of
2.6 the United States;

2.7 (2) which qualifies as a DISC, as defined in section 992(a) of the Internal Revenue
2.8 Code; ~~or~~

2.9 (3) which qualifies as a FSC, as defined in section 922 of the Internal Revenue Code;

2.10 (4) which is treated as a domestic corporation for purposes of section 1504(d) of the
2.11 Internal Revenue Code;

2.12 (5) if the average of its property, payroll, and sales factors, as defined under section
2.13 290.191, within the 50 states of the United States and the District of Columbia is 20
2.14 percent or more; or

2.15 (6) which is a controlled foreign corporation as defined in section 957 of the Internal
2.16 Revenue Code.

2.17 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
2.18 December 31, 2006.

2.19 Sec. 3. Minnesota Statutes 2006, section 290.01, subdivision 5a, is amended to read:

2.20 Subd. 5a. **Foreign corporation.** (a) The term "foreign," when applied to a
2.21 corporation, means a corporation other than either a domestic corporation or another entity
2.22 meeting the requirements of paragraphs (b) to (d).

2.23 (b) A foreign corporation excludes a foreign corporation treated as a domestic
2.24 corporation for purposes of section 1504(d) of the Internal Revenue Code.

2.25 (c) A foreign corporation excludes a corporation or other entity if the average of its
2.26 property, payroll, and sales factors, as defined under section 290.191, within the 50 states
2.27 of the United States and the District of Columbia is 20 percent or more.

2.28 (d) A foreign corporation excludes a corporation that is a controlled foreign
2.29 corporation as defined in section 957 of the Internal Revenue Code.

2.30 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
2.31 December 31, 2006.

2.32 Sec. 4. Minnesota Statutes 2006, section 290.01, subdivision 19c, is amended to read:

3.1 Subd. 19c. **Corporations; additions to federal taxable income.** For corporations,
3.2 there shall be added to federal taxable income:

3.3 (1) the amount of any deduction taken for federal income tax purposes for income,
3.4 excise, or franchise taxes based on net income or related minimum taxes, including but not
3.5 limited to the tax imposed under section 290.0922, paid by the corporation to Minnesota,
3.6 another state, a political subdivision of another state, the District of Columbia, or any
3.7 foreign country or possession of the United States;

3.8 (2) interest not subject to federal tax upon obligations of: the United States, its
3.9 possessions, its agencies, or its instrumentalities; the state of Minnesota or any other
3.10 state, any of its political or governmental subdivisions, any of its municipalities, or any
3.11 of its governmental agencies or instrumentalities; the District of Columbia; or Indian
3.12 tribal governments;

3.13 (3) exempt-interest dividends received as defined in section 852(b)(5) of the Internal
3.14 Revenue Code;

3.15 (4) the amount of any net operating loss deduction taken for federal income tax
3.16 purposes under section 172 or 832(c)(10) of the Internal Revenue Code or operations loss
3.17 deduction under section 810 of the Internal Revenue Code;

3.18 (5) the amount of any special deductions taken for federal income tax purposes
3.19 under sections 241 to 247 and 965 of the Internal Revenue Code;

3.20 (6) losses from the business of mining, as defined in section 290.05, subdivision 1,
3.21 clause (a), that are not subject to Minnesota income tax;

3.22 (7) the amount of any capital losses deducted for federal income tax purposes under
3.23 sections 1211 and 1212 of the Internal Revenue Code;

3.24 (8) the exempt foreign trade income of a foreign sales corporation under sections
3.25 921(a) and 291 of the Internal Revenue Code;

3.26 (9) the amount of percentage depletion deducted under sections 611 through 614 and
3.27 291 of the Internal Revenue Code;

3.28 (10) for certified pollution control facilities placed in service in a taxable year
3.29 beginning before December 31, 1986, and for which amortization deductions were elected
3.30 under section 169 of the Internal Revenue Code of 1954, as amended through December
3.31 31, 1985, the amount of the amortization deduction allowed in computing federal taxable
3.32 income for those facilities;

3.33 (11) the amount of ~~any deemed dividend from a foreign operating corporation~~
3.34 ~~determined pursuant to section 290.17, subdivision 4, paragraph (g);~~ payments to a foreign
3.35 corporation that is part of the unitary business and that is not subject to an election for the
3.36 taxable year under section 290.17, subdivision 4a, deducted in computing federal taxable

4.1 income, if the payments would be taxable under section 952 of the Internal Revenue
 4.2 Code, if the recipient corporation were a controlled foreign corporation as defined in
 4.3 section 957 of the Internal Revenue Code;

4.4 (12) the amount of a partner's pro rata share of net income which does not flow
 4.5 through to the partner because the partnership elected to pay the tax on the income under
 4.6 section 6242(a)(2) of the Internal Revenue Code;

4.7 (13) the amount of net income excluded under section 114 of the Internal Revenue
 4.8 Code;

4.9 (14) any increase in subpart F income, as defined in section 952(a) of the Internal
 4.10 Revenue Code, for the taxable year when subpart F income is calculated without regard
 4.11 to the provisions of section 103 of Public Law 109-222;

4.12 (15) 80 percent of the depreciation deduction allowed under section 168(k)(1)(A)
 4.13 and (k)(4)(A) of the Internal Revenue Code. For purposes of this clause, if the taxpayer
 4.14 has an activity that in the taxable year generates a deduction for depreciation under
 4.15 section 168(k)(1)(A) and (k)(4)(A) and the activity generates a loss for the taxable year
 4.16 that the taxpayer is not allowed to claim for the taxable year, "the depreciation allowed
 4.17 under section 168(k)(1)(A) and (k)(4)(A)" for the taxable year is limited to excess of the
 4.18 depreciation claimed by the activity under section 168(k)(1)(A) and (k)(4)(A) over the
 4.19 amount of the loss from the activity that is not allowed in the taxable year. In succeeding
 4.20 taxable years when the losses not allowed in the taxable year are allowed, the depreciation
 4.21 under section 168(k)(1)(A) and (k)(4)(A) is allowed;

4.22 (16) 80 percent of the amount by which the deduction allowed by section 179 of the
 4.23 Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal
 4.24 Revenue Code of 1986, as amended through December 31, 2003;

4.25 (17) to the extent deducted in computing federal taxable income, the amount of the
 4.26 deduction allowable under section 199 of the Internal Revenue Code; and

4.27 (18) the exclusion allowed under section 139A of the Internal Revenue Code for
 4.28 federal subsidies for prescription drug plans.

4.29 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 4.30 December 31, 2006.

4.31 Sec. 5. Minnesota Statutes 2006, section 290.01, subdivision 19d, is amended to read:

4.32 Subd. 19d. **Corporations; modifications decreasing federal taxable income.** For
 4.33 corporations, there shall be subtracted from federal taxable income after the increases
 4.34 provided in subdivision 19c:

5.1 (1) the amount of foreign dividend gross-up added to gross income for federal
5.2 income tax purposes under section 78 of the Internal Revenue Code;

5.3 (2) the amount of salary expense not allowed for federal income tax purposes due to
5.4 claiming the federal jobs credit under section 51 of the Internal Revenue Code;

5.5 (3) any dividend (not including any distribution in liquidation) paid within the
5.6 taxable year by a national or state bank to the United States, or to any instrumentality of
5.7 the United States exempt from federal income taxes, on the preferred stock of the bank
5.8 owned by the United States or the instrumentality;

5.9 (4) amounts disallowed for intangible drilling costs due to differences between
5.10 this chapter and the Internal Revenue Code in taxable years beginning before January
5.11 1, 1987, as follows:

5.12 (i) to the extent the disallowed costs are represented by physical property, an amount
5.13 equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09,
5.14 subdivision 7, subject to the modifications contained in subdivision 19e; and

5.15 (ii) to the extent the disallowed costs are not represented by physical property, an
5.16 amount equal to the allowance for cost depletion under Minnesota Statutes 1986, section
5.17 290.09, subdivision 8;

5.18 (5) the deduction for capital losses pursuant to sections 1211 and 1212 of the
5.19 Internal Revenue Code, except that:

5.20 (i) for capital losses incurred in taxable years beginning after December 31, 1986,
5.21 capital loss carrybacks shall not be allowed;

5.22 (ii) for capital losses incurred in taxable years beginning after December 31, 1986,
5.23 a capital loss carryover to each of the 15 taxable years succeeding the loss year shall be
5.24 allowed;

5.25 (iii) for capital losses incurred in taxable years beginning before January 1, 1987, a
5.26 capital loss carryback to each of the three taxable years preceding the loss year, subject to
5.27 the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed; and

5.28 (iv) for capital losses incurred in taxable years beginning before January 1, 1987,
5.29 a capital loss carryover to each of the five taxable years succeeding the loss year to the
5.30 extent such loss was not used in a prior taxable year and subject to the provisions of
5.31 Minnesota Statutes 1986, section 290.16, shall be allowed;

5.32 (6) an amount for interest and expenses relating to income not taxable for federal
5.33 income tax purposes, if (i) the income is taxable under this chapter and (ii) the interest and
5.34 expenses were disallowed as deductions under the provisions of section 171(a)(2), 265 or
5.35 291 of the Internal Revenue Code in computing federal taxable income;

6.1 (7) in the case of mines, oil and gas wells, other natural deposits, and timber for
6.2 which percentage depletion was disallowed pursuant to subdivision 19c, clause (11), a
6.3 reasonable allowance for depletion based on actual cost. In the case of leases the deduction
6.4 must be apportioned between the lessor and lessee in accordance with rules prescribed
6.5 by the commissioner. In the case of property held in trust, the allowable deduction must
6.6 be apportioned between the income beneficiaries and the trustee in accordance with the
6.7 pertinent provisions of the trust, or if there is no provision in the instrument, on the basis
6.8 of the trust's income allocable to each;

6.9 (8) for certified pollution control facilities placed in service in a taxable year
6.10 beginning before December 31, 1986, and for which amortization deductions were elected
6.11 under section 169 of the Internal Revenue Code of 1954, as amended through December
6.12 31, 1985, an amount equal to the allowance for depreciation under Minnesota Statutes
6.13 1986, section 290.09, subdivision 7;

6.14 (9) amounts included in federal taxable income that are due to refunds of income,
6.15 excise, or franchise taxes based on net income or related minimum taxes paid by the
6.16 corporation to Minnesota, another state, a political subdivision of another state, the
6.17 District of Columbia, or a foreign country or possession of the United States to the extent
6.18 that the taxes were added to federal taxable income under section 290.01, subdivision 19c,
6.19 clause (1), in a prior taxable year;

6.20 ~~(10) 80 percent of royalties, fees, or other like income accrued or received from a~~
6.21 ~~foreign operating corporation or a foreign corporation which is part of the same unitary~~
6.22 ~~business as the receiving corporation;~~

6.23 ~~(11)~~ income or gains from the business of mining as defined in section 290.05,
6.24 subdivision 1, clause (a), that are not subject to Minnesota franchise tax;

6.25 ~~(12)~~ (11) the amount of disability access expenditures in the taxable year which are
6.26 not allowed to be deducted or capitalized under section 44(d)(7) of the Internal Revenue
6.27 Code;

6.28 ~~(13)~~ (12) the amount of qualified research expenses not allowed for federal income
6.29 tax purposes under section 280C(c) of the Internal Revenue Code, but only to the extent
6.30 that the amount exceeds the amount of the credit allowed under section 290.068;

6.31 ~~(14)~~ (13) the amount of salary expenses not allowed for federal income tax purposes
6.32 due to claiming the Indian employment credit under section 45A(a) of the Internal
6.33 Revenue Code;

6.34 ~~(15)~~ (14) the amount of any refund of environmental taxes paid under section 59A of
6.35 the Internal Revenue Code;

7.1 ~~(16)~~ (15) for taxable years beginning before January 1, 2008, the amount of the
 7.2 federal small ethanol producer credit allowed under section 40(a)(3) of the Internal
 7.3 Revenue Code which is included in gross income under section 87 of the Internal Revenue
 7.4 Code;

7.5 ~~(17)~~ (16) for a corporation whose foreign sales corporation, as defined in section
 7.6 922 of the Internal Revenue Code, constituted a foreign operating corporation during any
 7.7 taxable year ending before January 1, 1995, and a return was filed by August 15, 1996,
 7.8 claiming the deduction under section 290.21, subdivision 4, for income received from
 7.9 the foreign operating corporation, an amount equal to 1.23 multiplied by the amount of
 7.10 income excluded under section 114 of the Internal Revenue Code, provided the income is
 7.11 not income of a foreign operating company;

7.12 ~~(18)~~ (17) any decrease in subpart F income, as defined in section 952(a) of the
 7.13 Internal Revenue Code, for the taxable year when subpart F income is calculated without
 7.14 regard to the provisions of section 614 of Public Law 107-147;

7.15 ~~(19)~~ (18) in each of the five tax years immediately following the tax year in which an
 7.16 addition is required under subdivision 19c, clause (15), an amount equal to one-fifth of
 7.17 the delayed depreciation. For purposes of this clause, "delayed depreciation" means the
 7.18 amount of the addition made by the taxpayer under subdivision 19c, clause ~~(15)~~ (14). The
 7.19 resulting delayed depreciation cannot be less than zero; and

7.20 ~~(20)~~ (19) in each of the five tax years immediately following the tax year in which an
 7.21 addition is required under subdivision 19c, clause ~~(16)~~ (15), an amount equal to one-fifth
 7.22 of the amount of the addition.

7.23 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 7.24 December 31, 2006.

7.25 Sec. 6. Minnesota Statutes 2006, section 290.17, subdivision 4, is amended to read:

7.26 Subd. 4. **Unitary business principle.** (a) If a trade or business conducted wholly
 7.27 within this state or partly within and partly without this state is part of a unitary business,
 7.28 the entire income of the unitary business is subject to apportionment pursuant to section
 7.29 290.191. Notwithstanding subdivision 2, paragraph (c), none of the income of a unitary
 7.30 business is considered to be derived from any particular source and none may be allocated
 7.31 to a particular place except as provided by the applicable apportionment formula. The
 7.32 provisions of this subdivision do not apply to business income subject to subdivision 5,
 7.33 income of an insurance company, or income of an investment company determined under
 7.34 section 290.36.

8.1 (b) The term "unitary business" means business activities or operations which
8.2 result in a flow of value between them. The term may be applied within a single legal
8.3 entity or between multiple entities and without regard to whether each entity is a sole
8.4 proprietorship, a corporation, a partnership or a trust.

8.5 (c) Unity is presumed whenever there is unity of ownership, operation, and use,
8.6 evidenced by centralized management or executive force, centralized purchasing,
8.7 advertising, accounting, or other controlled interaction, but the absence of these
8.8 centralized activities will not necessarily evidence a nonunitary business. Unity is also
8.9 presumed when business activities or operations are of mutual benefit, dependent upon or
8.10 contributory to one another, either individually or as a group.

8.11 (d) Where a business operation conducted in Minnesota is owned by a business
8.12 entity that carries on business activity outside the state different in kind from that
8.13 conducted within this state, and the other business is conducted entirely outside the state, it
8.14 is presumed that the two business operations are unitary in nature, interrelated, connected,
8.15 and interdependent unless it can be shown to the contrary.

8.16 (e) Unity of ownership is not deemed to exist when a corporation is involved unless
8.17 that corporation is a member of a group of two or more business entities and more than 50
8.18 percent of the voting stock of each member of the group is directly or indirectly owned
8.19 by a common owner or by common owners, either corporate or noncorporate, or by one
8.20 or more of the member corporations of the group. For this purpose, the term "voting
8.21 stock" shall include membership interests of mutual insurance holding companies formed
8.22 under section 66A.40.

8.23 (f) The net income and apportionment factors under section 290.191 or 290.20 of
8.24 foreign corporations and other foreign entities which are part of a unitary business shall
8.25 not be included in the net income or the apportionment factors of the unitary business.
8.26 A foreign corporation or other foreign entity which is required to file a return under this
8.27 chapter shall file on a separate return basis. ~~The net income and apportionment factors~~
8.28 ~~under section 290.191 or 290.20 of foreign operating corporations shall not be included in~~
8.29 ~~the net income or the apportionment factors of the unitary business except as provided in~~
8.30 ~~paragraph (g):~~

8.31 ~~(g) The adjusted net income of a foreign operating corporation shall be deemed to~~
8.32 ~~be paid as a dividend on the last day of its taxable year to each shareholder thereof, in~~
8.33 ~~proportion to each shareholder's ownership, with which such corporation is engaged in~~
8.34 ~~a unitary business. Such deemed dividend shall be treated as a dividend under section~~
8.35 ~~290.21, subdivision 4.~~

9.1 ~~Dividends actually paid by a foreign operating corporation to a corporate shareholder~~
 9.2 ~~which is a member of the same unitary business as the foreign operating corporation shall~~
 9.3 ~~be eliminated from the net income of the unitary business in preparing a combined report~~
 9.4 ~~for the unitary business. The adjusted net income of a foreign operating corporation~~
 9.5 ~~shall be its net income adjusted as follows:~~

9.6 ~~(1) any taxes paid or accrued to a foreign country, the commonwealth of Puerto~~
 9.7 ~~Rico, or a United States possession or political subdivision of any of the foregoing shall~~
 9.8 ~~be a deduction; and~~

9.9 ~~(2) the subtraction from federal taxable income for payments received from foreign~~
 9.10 ~~corporations or foreign operating corporations under section 290.01, subdivision 19d,~~
 9.11 ~~clause (10), shall not be allowed.~~

9.12 ~~If a foreign operating corporation incurs a net loss, neither income nor deduction~~
 9.13 ~~from that corporation shall be included in determining the net income of the unitary~~
 9.14 ~~business.~~

9.15 ~~(h)~~ (g) For purposes of determining the net income of a unitary business and the
 9.16 factors to be used in the apportionment of net income pursuant to section 290.191 or
 9.17 290.20, there must be included only the income and apportionment factors of domestic
 9.18 corporations or other domestic entities ~~other than foreign operating corporations~~ that are
 9.19 determined to be part of the unitary business pursuant to this subdivision, notwithstanding
 9.20 that foreign corporations or other foreign entities might be included in the unitary
 9.21 business, except as provided in subdivision 4a.

9.22 ~~(i) Deductions for expenses, interest, or taxes otherwise allowable under this chapter~~
 9.23 ~~that are connected with or allocable against dividends, deemed dividends described~~
 9.24 ~~in paragraph (g), or royalties, fees, or other like income described in section 290.01,~~
 9.25 ~~subdivision 19d, clause (10), shall not be disallowed.~~

9.26 ~~(j)~~ (h) Each corporation or other entity, except a sole proprietorship, that is part of
 9.27 a unitary business must file combined reports as the commissioner determines. On the
 9.28 reports, all intercompany transactions between entities included pursuant to paragraph
 9.29 ~~(h)~~ (g) must be eliminated and the entire net income of the unitary business determined in
 9.30 accordance with this subdivision is apportioned among the entities by using each entity's
 9.31 Minnesota factors for apportionment purposes in the numerators of the apportionment
 9.32 formula and the total factors for apportionment purposes of all entities included pursuant
 9.33 to paragraph ~~(h)~~ (g) in the denominators of the apportionment formula.

9.34 ~~(k)~~ (i) If a corporation has been divested from a unitary business and is included in a
 9.35 combined report for a fractional part of the common accounting period of the combined
 9.36 report:

10.1 (1) its income includable in the combined report is its income incurred for that part
10.2 of the year determined by proration or separate accounting; and

10.3 (2) its sales, property, and payroll included in the apportionment formula must
10.4 be prorated or accounted for separately.

10.5 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
10.6 December 31, 2006.

10.7 Sec. 7. Minnesota Statutes 2006, section 290.17, is amended by adding a subdivision
10.8 to read:

10.9 Subd. 4a. **Election to include foreign corporations.** (a) Notwithstanding the
10.10 provisions of subdivision 4, paragraph (f), a unitary business may elect to include all
10.11 foreign corporations and other foreign entities that are part of the unitary business in the
10.12 net income and the apportionment factors of the unitary business under the terms provided
10.13 in this subdivision.

10.14 (b) An election or a revocation made under this subdivision must be made in the form
10.15 and manner provided by the commissioner and include any information, consents, or other
10.16 agreements that the commissioner prescribes. The election must be made by the due date
10.17 of the return for the taxable year and applies for that taxable year and the succeeding four
10.18 taxable years or until it is revoked as provided in this paragraph, whichever occurs later.
10.19 Revocation of an election under this subdivision is effective beginning with the first taxable
10.20 year that begins two years after the date the revocation is filed with the commissioner. If a
10.21 taxpayer revokes an election, a subsequent election under this subdivision may not take
10.22 effect until the third taxable year after the revocation became effective.

10.23 (c) For each taxable year in which an election is effective under this subdivision,
10.24 the net income and apportionment factors of the unitary business must include the net
10.25 income and apportionment factors of all foreign corporations and other foreign entities
10.26 that are part of the unitary business.

10.27 (d) The commissioner may waive any of the time requirements under paragraph (b)
10.28 to the extent necessary to reflect the amount of income fairly attributable to this state.

10.29 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
10.30 December 31, 2006.

10.31 Sec. 8. Minnesota Statutes 2006, section 290.191, subdivision 5, is amended to read:

10.32 Subd. 5. **Determination of sales factor.** For purposes of this section, the following
10.33 rules apply in determining the sales factor.

11.1 (a) The sales factor includes all sales, gross earnings, or receipts received in the
 11.2 ordinary course of the business, except that the following types of income are not included
 11.3 in the sales factor:

11.4 (1) interest;

11.5 (2) dividends;

11.6 (3) sales of capital assets as defined in section 1221 of the Internal Revenue Code;

11.7 (4) sales of property used in the trade or business, except sales of leased property of
 11.8 a type which is regularly sold as well as leased; or

11.9 (5) sales of debt instruments as defined in section 1275(a)(1) of the Internal Revenue
 11.10 Code or sales of stock; ~~and~~

11.11 ~~(6) royalties, fees, or other like income of a type which qualify for a subtraction from~~
 11.12 ~~federal taxable income under section 290.01, subdivision 19d(10).~~

11.13 (b) Sales of tangible personal property are made within this state if the property is
 11.14 received by a purchaser at a point within this state, and the taxpayer is taxable in this state,
 11.15 regardless of the f.o.b. point, other conditions of the sale, or the ultimate destination
 11.16 of the property.

11.17 (c) Tangible personal property delivered to a common or contract carrier or foreign
 11.18 vessel for delivery to a purchaser in another state or nation is a sale in that state or nation,
 11.19 regardless of f.o.b. point or other conditions of the sale.

11.20 (d) Notwithstanding paragraphs (b) and (c), when intoxicating liquor, wine,
 11.21 fermented malt beverages, cigarettes, or tobacco products are sold to a purchaser who is
 11.22 licensed by a state or political subdivision to resell this property only within the state of
 11.23 ultimate destination, the sale is made in that state.

11.24 (e) Sales made by or through a corporation that is qualified as a domestic
 11.25 international sales corporation under section 992 of the Internal Revenue Code are not
 11.26 considered to have been made within this state.

11.27 (f) Sales, rents, royalties, and other income in connection with real property is
 11.28 attributed to the state in which the property is located.

11.29 (g) Receipts from the lease or rental of tangible personal property, including finance
 11.30 leases and true leases, must be attributed to this state if the property is located in this
 11.31 state and to other states if the property is not located in this state. Receipts from the
 11.32 lease or rental of moving property including, but not limited to, motor vehicles, rolling
 11.33 stock, aircraft, vessels, or mobile equipment are included in the numerator of the receipts
 11.34 factor to the extent that the property is used in this state. The extent of the use of moving
 11.35 property is determined as follows:

11.36 (1) A motor vehicle is used wholly in the state in which it is registered.

12.1 (2) The extent that rolling stock is used in this state is determined by multiplying
12.2 the receipts from the lease or rental of the rolling stock by a fraction, the numerator of
12.3 which is the miles traveled within this state by the leased or rented rolling stock and the
12.4 denominator of which is the total miles traveled by the leased or rented rolling stock.

12.5 (3) The extent that an aircraft is used in this state is determined by multiplying the
12.6 receipts from the lease or rental of the aircraft by a fraction, the numerator of which is
12.7 the number of landings of the aircraft in this state and the denominator of which is the
12.8 total number of landings of the aircraft.

12.9 (4) The extent that a vessel, mobile equipment, or other mobile property is used in
12.10 the state is determined by multiplying the receipts from the lease or rental of the property
12.11 by a fraction, the numerator of which is the number of days during the taxable year the
12.12 property was in this state and the denominator of which is the total days in the taxable year.

12.13 (h) Royalties and other income not described in paragraph (a), clause (6), received
12.14 for the use of or for the privilege of using intangible property, including patents,
12.15 know-how, formulas, designs, processes, patterns, copyrights, trade names, service names,
12.16 franchises, licenses, contracts, customer lists, or similar items, must be attributed to the
12.17 state in which the property is used by the purchaser. If the property is used in more
12.18 than one state, the royalties or other income must be apportioned to this state pro rata
12.19 according to the portion of use in this state. If the portion of use in this state cannot be
12.20 determined, the royalties or other income must be excluded from both the numerator
12.21 and the denominator. Intangible property is used in this state if the purchaser uses the
12.22 intangible property or the rights therein in the regular course of its business operations in
12.23 this state, regardless of the location of the purchaser's customers.

12.24 (i) Sales of intangible property are made within the state in which the property is
12.25 used by the purchaser. If the property is used in more than one state, the sales must be
12.26 apportioned to this state pro rata according to the portion of use in this state. If the
12.27 portion of use in this state cannot be determined, the sale must be excluded from both the
12.28 numerator and the denominator of the sales factor. Intangible property is used in this
12.29 state if the purchaser used the intangible property in the regular course of its business
12.30 operations in this state.

12.31 (j) Receipts from the performance of services must be attributed to the state where
12.32 the services are received. For the purposes of this section, receipts from the performance
12.33 of services provided to a corporation, partnership, or trust may only be attributed to a state
12.34 where it has a fixed place of doing business. If the state where the services are received is
12.35 not readily determinable or is a state where the corporation, partnership, or trust receiving
12.36 the service does not have a fixed place of doing business, the services shall be deemed

13.1 to be received at the location of the office of the customer from which the services were
 13.2 ordered in the regular course of the customer's trade or business. If the ordering office
 13.3 cannot be determined, the services shall be deemed to be received at the office of the
 13.4 customer to which the services are billed.

13.5 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 13.6 December 31, 2006.

13.7 Sec. 9. Minnesota Statutes 2006, section 290.21, subdivision 4, is amended to read:

13.8 Subd. 4. **Dividends received from another corporation.** (a)(1) Eighty percent
 13.9 of dividends received by a corporation during the taxable year from another corporation,
 13.10 in which the recipient owns 20 percent or more of the stock, by vote and value, not
 13.11 including stock described in section 1504(a)(4) of the Internal Revenue Code when the
 13.12 corporate stock with respect to which dividends are paid does not constitute the stock in
 13.13 trade of the taxpayer or would not be included in the inventory of the taxpayer, or does not
 13.14 constitute property held by the taxpayer primarily for sale to customers in the ordinary
 13.15 course of the taxpayer's trade or business, or when the trade or business of the taxpayer
 13.16 does not consist principally of the holding of the stocks and the collection of the income
 13.17 and gains therefrom; and

13.18 (2)(i) the remaining 20 percent of dividends if the dividends received are the stock in
 13.19 an affiliated company transferred in an overall plan of reorganization and the dividend
 13.20 is eliminated in consolidation under Treasury Department Regulation 1.1502-14(a), as
 13.21 amended through December 31, 1989;

13.22 (ii) the remaining 20 percent of dividends if the dividends are received from a
 13.23 corporation which is subject to tax under section 290.36 and which is a member of an
 13.24 affiliated group of corporations as defined by the Internal Revenue Code and the dividend
 13.25 is eliminated in consolidation under Treasury Department Regulation 1.1502-14(a), as
 13.26 amended through December 31, 1989, or is deducted under an election under section
 13.27 243(b) of the Internal Revenue Code; or

13.28 (iii) the remaining 20 percent of the dividends if the dividends are received from a
 13.29 property and casualty insurer as defined under section 60A.60, subdivision 8, which is a
 13.30 member of an affiliated group of corporations as defined by the Internal Revenue Code
 13.31 and either: (A) the dividend is eliminated in consolidation under Treasury Regulation
 13.32 1.1502-14(a), as amended through December 31, 1989; or (B) the dividend is deducted
 13.33 under an election under section 243(b) of the Internal Revenue Code.

13.34 (b) Seventy percent of dividends received by a corporation during the taxable year
 13.35 from another corporation in which the recipient owns less than 20 percent of the stock,

14.1 by vote or value, not including stock described in section 1504(a)(4) of the Internal
14.2 Revenue Code when the corporate stock with respect to which dividends are paid does not
14.3 constitute the stock in trade of the taxpayer, or does not constitute property held by the
14.4 taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or
14.5 business, or when the trade or business of the taxpayer does not consist principally of the
14.6 holding of the stocks and the collection of income and gain therefrom.

14.7 (c) The dividend deduction provided in this subdivision shall be allowed only with
14.8 respect to dividends that are included in a corporation's Minnesota taxable net income
14.9 for the taxable year.

14.10 The dividend deduction provided in this subdivision does not apply to a dividend
14.11 from a corporation which, for the taxable year of the corporation in which the distribution
14.12 is made or for the next preceding taxable year of the corporation, is a corporation exempt
14.13 from tax under section 501 of the Internal Revenue Code.

14.14 The dividend deduction provided in this subdivision applies to the amount of
14.15 regulated investment company dividends only to the extent determined under section
14.16 854(b) of the Internal Revenue Code.

14.17 The dividend deduction provided in this subdivision shall not be allowed with
14.18 respect to any dividend for which a deduction is not allowed under the provisions of
14.19 section 246(c) of the Internal Revenue Code.

14.20 (d) If dividends received by a corporation that does not have nexus with Minnesota
14.21 under the provisions of Public Law 86-272 are included as income on the return of an
14.22 affiliated corporation permitted or required to file a combined report under section 290.34,
14.23 subdivision 2, then for purposes of this subdivision the determination as to whether the
14.24 trade or business of the corporation consists principally of the holding of stocks and the
14.25 collection of income and gains therefrom shall be made with reference to the trade or
14.26 business of the affiliated corporation having a nexus with Minnesota.

14.27 (e) The deduction provided by this subdivision does not apply if the dividends are
14.28 paid by a FSC as defined in section 922 of the Internal Revenue Code.

14.29 (f) If one or more of the members of the unitary group whose income is included on
14.30 the combined report received a dividend, the deduction under this subdivision for each
14.31 member of the unitary business required to file a return under this chapter is the product
14.32 of: (1) 100 percent of the dividends received by members of the group; (2) the percentage
14.33 allowed pursuant to paragraph (a) or (b); and (3) the percentage of the taxpayer's business
14.34 income apportionable to this state for the taxable year under section 290.191 or 290.20.

15.1 (g) The deduction provided by paragraph (a) does not apply to dividends paid by a
15.2 foreign corporation that is part of the unitary business for the taxable year for which an
15.3 election was not made under section 290.17, subdivision 4a.

15.4 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
15.5 December 31, 2006.

15.6 Sec. 10. **REPEALER.**

15.7 Minnesota Statutes 2006, sections 290.01, subdivision 6b; and 290.0921, subdivision
15.8 7, are repealed.

15.9 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
15.10 December 31, 2006.