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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH  
SESSION

HOUSE FILE NO. **2441**

April 19, 2007

Authored by Davnie, Kelliher, Lenczewski, Erhardt and Paulsen  
The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act  
1.2 relating to taxation; corporate franchise; modifying the definition of sales  
1.3 from performance of services for regulated investment companies under the  
1.4 apportionment formula; amending Minnesota Statutes 2006, section 290.191,  
1.5 subdivision 5.

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

1.7 Section 1. Minnesota Statutes 2006, section 290.191, subdivision 5, is amended to read:

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

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

1.13 (1) interest;

1.14 (2) dividends;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.33 (h) Royalties and other income not described in paragraph (a), clause (6), received  
2.34 for the use of or for the privilege of using intangible property, including patents,  
2.35 know-how, formulas, designs, processes, patterns, copyrights, trade names, service names,  
2.36 franchises, licenses, contracts, customer lists, or similar items, must be attributed to the

3.1 state in which the property is used by the purchaser. If the property is used in more  
3.2 than one state, the royalties or other income must be apportioned to this state pro rata  
3.3 according to the portion of use in this state. If the portion of use in this state cannot be  
3.4 determined, the royalties or other income must be excluded from both the numerator  
3.5 and the denominator. Intangible property is used in this state if the purchaser uses the  
3.6 intangible property or the rights therein in the regular course of its business operations in  
3.7 this state, regardless of the location of the purchaser's customers.

3.8 (i) Sales of intangible property are made within the state in which the property is  
3.9 used by the purchaser. If the property is used in more than one state, the sales must be  
3.10 apportioned to this state pro rata according to the portion of use in this state. If the  
3.11 portion of use in this state cannot be determined, the sale must be excluded from both the  
3.12 numerator and the denominator of the sales factor. Intangible property is used in this  
3.13 state if the purchaser used the intangible property in the regular course of its business  
3.14 operations in this state.

3.15 (j) Receipts from the performance of services must be attributed to the state where  
3.16 the services are received. For the purposes of this section, receipts from the performance  
3.17 of services provided to a corporation, partnership, or trust may only be attributed to a state  
3.18 where it has a fixed place of doing business. If the state where the services are received is  
3.19 not readily determinable or is a state where the corporation, partnership, or trust receiving  
3.20 the service does not have a fixed place of doing business, the services shall be deemed  
3.21 to be received at the location of the office of the customer from which the services were  
3.22 ordered in the regular course of the customer's trade or business. If the ordering office  
3.23 cannot be determined, the services shall be deemed to be received at the office of the  
3.24 customer to which the services are billed. For purposes of this subdivision and subdivision  
3.25 6, paragraph (1), receipts from the performance of services provided by corporations  
3.26 or trusts, providing management, distribution, or administrative services to any fund  
3.27 regulated under the Investment Company Act of 1940, are attributed to the states where  
3.28 each fund's shareholders reside as determined by the mailing address furnished by the  
3.29 client, based on the average number of outstanding shares owned by the shareholders at  
3.30 the end of each month compared to the total number of outstanding shares. For purposes  
3.31 of this section, when a fund shareholder of record is an insurance company holding the  
3.32 shares as depositor for policyholders, the corporation can elect to treat the policyholders  
3.33 of the insurance company as the fund shareholders. This election applies to all fund  
3.34 shareholders that are insurance companies and is irrevocable for, and applicable for, five  
3.35 successive income years.

- 4.1 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
- 4.2 December 31, 2007.