Minnesota tax bill enacted

Overview

After calling a special session for the Minnesota Legislature, Governor Mark Dayton signed House File 1 (H.F. 1)[1] on May 30, 2017 into law.[2] H.F. 1 as enacted impacts individual income, corporate income, sales and use tax and estate tax. Notable corporate income tax and sales and use tax amendments include the following:

Corporate Income Tax

- Expanded definition of "financial institution"
- Inclusion of certain insurance companies in unitary returns
- Increase in Research and Development credit rate

Sales and Use Tax

- Expanded collection requirements for retailers in the state, marketplace providers and affiliated entities
- "Real property" definition added
- Expanded exemptions for telecommunications or pay television services equipment

This Tax Alert summarizes these law changes which are effective for tax years beginning after December 31, 2016, unless otherwise noted.

Corporate Income Tax

Expanded definition of "financial institution"

H.F. 1 expands the "financial institution" definition to include all entities that are majority owned by a financial institution or that derive more than one-half of their total gross income from leasing.[3] Previously, the financial institution apportionment provisions only applied to entities who were a registered holding company or a savings and loan holding company, a regulated financial corporation with insured deposits insured, or a corporation carrying on the business of a financial institution.[4] Business entities that do not meet the definition of financial institutions must apportion income to Minnesota using a single sales factor approach, which excludes interest income, dividends and net gains from the disposition of assets.[5] Financial institutions, by contrast, must include interest income, dividends and net gains from the disposition of assets in their sales factor.[6]

Inclusion of certain insurance companies in unitary returns

Two provisions of H.F. 1 address insurance companies; the first of which limits the scope of the insurance company exemption from corporate income tax. The exemption is now limited to insurance companies that are either licensed as an insurance company in Minnesota or licensed in another state that imposes retaliatory taxes on Minnesota

[1] Laws 2017, ch 1, 1st Special Session (H.F. 1). A copy of the adopted law is accessible here.
[2] Governor Dayton used a line item veto of the legislature's funding in an attempt to force legislators to repeal certain aspects of the tax bill in a yet to be called special session. Deloitte will release an updated alert if legislation is enacted or repealed in any subsequent special session with significant tax implications.
[3] H.F. 1, Sec. 4, amending Minn. Stat. §290.01, subd.4a.
[4] Minn. Stat. §290.01, subd.4a.
[5] Minn. Stat. §290.191, subd.2
[6] Minn.Stat. §290.191, subd.6b

companies.[7] Previously the exemption applied to any insurance company,[8] which was defined as an insurance company, life insurance company, or insurance company other than life as defined in the Internal Revenue Code.[9]

The second provision requires that insurance companies not licensed under Minnesota's general insurance company statutes or licensed in another state that imposes retaliatory taxes on Minnesota companies must be included in a Minnesota combined report, if they are otherwise part of a unitary business. Prior to the enactment of H.F. 1, non-licensed entities doing business as insurance companies were exempt from corporate income tax and excluded from the combined report. Now insurance companies that do not meet the newly limited insurance company exemption are subject to corporate income tax and must be included in a Minnesota combined report, if they are otherwise part of a unitary business.[10]

Increase in Research and Development Credit Rate

H.F 1 increases the second tier rate of the Research and Development credit from 2.5% to 4.0%, on qualifying expenses over $2 million.[11]

Sales and Use Tax

Retailers in the state, marketplace providers and affiliated entities

H.F. 1 expands the definition of a "retailer maintaining a place of business in the state" to include retailers with a storage facility in Minnesota, employing a Minnesota resident who works from a home office in the state, or which have a marketplace provider or other third party operating in the state under the retailer's authority to facilitate or process sales in the state.[12]

H.F 1 also extends the requirement to collect and remit sales and use taxes to marketplace providers. "Marketplace providers" are defined as persons who facilitate a retail sale by a retailer by: (1) listing or advertising for sale by the retailer in any forum, tangible personal property, services, or digital goods that are subject to sales tax; and (2) either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the retailer regardless of whether regardless of whether the marketplace provide receives compensation or other consideration in exchange for its services.[13] Retailers making total taxable sales into the state of less than $10,000 in a 12-month period are not required to collect and remit sales tax if they are retailers maintaining a place of business in the state solely because they made sales through marketplace providers.[14]

A retailer having an in-state affiliate is required to collect and remit sales and use tax. The definition of "affiliated entities" is modified to include in-state entities that sell the same products as the retailer; facilitate the retailer's sales; use the retailer's intellectual property; deliver, install, assemble, or maintain certain property sold by the retailer; facilitate deliveries for the retailer; or assist in maintaining the retailer's market. [15]

These provisions are effective the *earlier* of: July 1, 2019; the date of a U.S Supreme Court decision that effectively overturns *Quill*[16]*;* or congressional authorization for states to impose collection and remittance requirements on remote sellers. [17] H.F 1 provides that these provisions are severable from the remainder of the bill.[18]

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[7] H.F. 1, Art. 1, Sec. 12, amending Minn. Stat. §290.05, subd. 1(c).
[8] Minn. Stat. §290.05, subd. 1(c).
[9] Minn. Stat. §290.01, subd. 5(b). IRC §§831(c), 816(a)
[10] H.F. 1, Art. 1, Sec. 30, adding Minn. Stat. §290.17, subd. 4(j).
[11] H.F. 1, Art. 1, Sec. 23, amending Minn. Stat. §290.068, subd. 1(b).
[12] H.F. 1, Art. 3, Sec. 9, amending Minn. Stat. §297A.66, subd. 1.
[13] H.F. 1, Art. 3, Sec. 9, amending Minn. Stat. §297A.66, subd. 1.
[14] H.F. 1, Art. 3, Sec. 9, amending Minn. Stat. §297A.66, subd. 2.
[15] H.F. 1, Art. 3, Sec. 23, amending Minn. Stats. §297A.66, subd. 4(a)
[16] *Quill Corp. v. N.D.*, 504 U.S. 298 (U.S. S.C. May, 26, 1992)
[17] H.F. 1, Art. 3, Sec. 9-12, 43-44, amending Minn. Stat. §§297A.66, subd. 1--§§297A.66, subd. 4b(c)
[18] H.F. 1, Art. 3, Sec. 43

"Real property" definition added

H.F 1 adds the definition of "Real property" for sales tax purposes. "Real property" includes (1) land, (2) buildings and structures, and (3) permanent improvements and fixtures of benefit to the building given its current use if they cannot be removed without causing substantial damage. The new definition excludes machinery and equipment that is otherwise exempt from the sales tax pursuant to a separate business exemption. This definition is effective for sales and purchases made after May 30, 2017.

Telecommunications or pay television services equipment exemption expanded

H.F 1 expands the definition for "telecommunications or pay television services machinery and equipment" to include fiber and conduit.[19] This definition is effective for sales and purchases made after June 30, 2017.

Additional changes

H.F. 1 amended additional sales and use tax provisions, as well as certain estate tax[20] and individual income tax provisions (e.g., factors used to determine an individual's residency,[21] the manner in which installment sale gains are recognized for nonresidents[22]) that are beyond the scope of this Alert.

ASC 740 treatment

Pursuant to ASC 740, "Income Taxes," companies are required to account for the effect of a change in income tax law in the period that includes the enactment date of that law change. The income tax law changes discussed in this Tax Alert were enacted on May 30, 2017. Accordingly, any impact of these law changes should be treated as a second quarter event for financial statement purposes for calendar year taxpayers.

Considerations

Taxpayers should consult with their tax advisers regarding how the changes in H.F. 1 may impact their filing requirements and Minnesota tax liabilities.

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[19] H.F. 1, Art. 3, Sec. 23, amending Minn. Stats. §§297A.68, subd. 5(d)(11) and297A.68, subd. 35(a).
[20] H.F. 1, Art. 1, Sec. 2, amending Minn. Stat. §289A.10 subd. 1.(2).
[21] H.F. 1, Art. 1, Sec. 5, amending Minn. Stat. §290.01, subd. 7(c)(2).
[22] H.F. 1, Art. 1, Sec. 11, adding Minn. Stat. §290.0137.