

2017 CORPORATE FRANCHISE TAX LEGISLATIVE BULLETIN



Appeals and Legal Services Division
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Unless otherwise noted, the provisions discussed in this bulletin can be found in 2017 Minn. Laws, 1st Spec. Sess. ch. 1.

Expanded electronic filing. Minn. Stat. § 289A.08, subd. 16, contains a \$5 fee for the non-electronic submission of individual income tax returns by a professional return preparer. The new law expanded this fee to apply to corporate, pass-through, and fiduciary income tax returns. However, taxpayers may opt out of electronic filing without incurring the fee by requesting that a preparer submit a return non-electronically. Effective for taxable years beginning after December 31, 2016, except changes to the definition of “tax refund or return preparer” to “tax preparer” or “preparer”, are effective for taxable years beginning after December 31, 2017.

Partnership return filing due date. Minn. Stat. § 289A.18, subd. 1, was amended to make the Minnesota partnership return due date match the federal due date. For fiscal year tax periods following the effective date, the Minnesota partnership return will now be due on the fifteenth day of the third month following the close of the year. For calendar year taxpayers filing their 2017 Minnesota partnership returns, the due date will be March 15, 2018. Effective May 31, 2017.

Automatic extensions for fiduciary income tax return. Minn. Stat. § 289A.19, subd. 7, was amended to provide that the fiduciary income tax filers receive an automatic and equivalent extension of the return filing deadline when a federal extension is granted. The extension does not affect the due date for payment. Effective May 31, 2017.

Assessments for pass-through companies. Minn. Stat. § 289A.35, was amended to allow S corporation shareholders and partners to request that orders of assessment be issued to and paid by the entity after the initiation of the audit. The commissioner has the authority to determine when such requests shall be allowed. Decisions by the commissioner on this issue are not appealable. Minn. Stat. §§ 290.31 and 289A.31, were also amended to allow partnerships to be liable for the individual income taxes due from partners. Effective May 31, 2017.

Preparer identification number. Minn. Stat. § 289A.60, subd. 28, which requires that an identification number be submitted on each individual income tax return prepared by a professional return preparer was amended to extend the requirement to professional preparers who prepare corporate, partnership, and fiduciary returns. There is a \$50.00 penalty for each return submitted by a professional preparer without the appropriate identification number. The amendment also subjects a tax preparer who is required to have a valid tax identification number but does not have one to a \$500 penalty for each failure. Effective for taxable years beginning after December 31, 2017.

Financial institution definition. Minn. Stat. § 290.01, subd. 4a, was amended to modify the definition of financial institution. Financial institutions apportion income differently from other taxpayers. Under the pre-existing definition, only certain corporations could be classified as “financial institutions.” Under the new law, the term “financial institution” can include any entity registered as a bank, savings association, or other similar organization under state or federal law. Additionally, under the new definition, entities and individuals who derive 50% or more of their income from activities commonly conducted by financial institutions will also be treated as financial institutions unless they provide clear and convincing evidence to the commissioner that they do not substantially compete with financial institutions in the market. Effective for taxable years beginning after December 31, 2016.

Accelerated recognition of certain installment sale gains. Newly enacted Minn. Stat. § 290.0137, requires nonresidents and persons who become nonresidents to recognize future year gains following the sale of the assets of, or an interest in, a pass through entity when they use the installment sale method of reporting for federal tax purposes. The provision also allows taxpayers to elect out of early recognition by agreeing to continue filing Minnesota tax returns and recognizing the full allocable amount of future year installment sale gains in the year that they are recognized federally. The provision also provides that taxpayers who do not elect out of early recognition will not be taxed twice on the gains recognized early if they continue to file Minnesota income tax returns in future years. Effective for taxable years beginning after December 31, 2016.

Research credit modifications. Minn. Stat. § 290.068, subd. 1, was amended so the credit rate for expenses over \$2,000,000 is 4% instead of 2.5%. Effective for taxable years beginning after December 31, 2016. Minn. Stat. § 290.068, subd. 2, was amended to make clear that Minnesota sales or receipts must be used in all calculations of the base period. Effective May 31, 2017.

Minnesota Historical Rehabilitation Credit. Minn. Stat. § 290.0681, subds. 1, 2, 7, and 9 are changed so those taking the historic rehabilitation credit will now apply and be approved by the Department of Administration and its commissioner, instead of the Minnesota Historical Society. Effective March 1, 2018. 2017 Minn. Laws, 1st Spec. Sess. ch. 4, art. 2, §§ 37 to 40.

Allocation language corporate franchise tax. Minn. Stat. § 290.17, subd. 2(c), was amended to clarify that gains from the sale of goodwill or income from a covenant not to compete, are to be allocated to Minnesota to the extent that prior year income was allocable to Minnesota. Effective May 31, 2017.

Insurance company utilized to shelter income. Minn. Stat. §§ 290.17, subd. 4; and 290.05, subd. 1, were amended to provide a more narrow definition of the term “insurance company.” Generally, insurance companies are excluded from the unitary groups of businesses who pay franchise tax under chapter 290. Under the new definition, that exclusion would only apply to insurance companies that are admitted to practice the business of insurance in Minnesota, or domiciled and licensed to practice the business of insurance in another state that has reciprocal agreement with Minnesota not to impose retaliatory taxes. Effective for taxable years beginning after December 31, 2016.

Small Business Investment Credit. 2010 Minn. Laws ch. 216, § 12, effective date for Minn. Stat. § 290.0692 was amended to sunset the credit at the same time as the Angel Investment Credit in section 116J.8737. Also retroactively revived and reenacted the section. Effective retroactive from January 1, 2015.

Financial Asset Securitization Investment Trust (FASIT) Repealer. The bill repeals Minn. Stat. §§ 290.9743, and 290.9744, which became obsolete following the repeal of federal FASIT legislation in 2005. Effective May 31, 2017.