

March 3, 2020

	Yes	No
DOR Administrative Costs/Savings	X	

Department of Revenue
 Analysis of H.F. 3389 (Marquart), As Proposed to be Amended (A20-0654)

	Fund Impact			
	<u>F.Y. 2020</u>	<u>F.Y. 2021</u>	<u>F.Y. 2022</u>	<u>F.Y. 2023</u>
		(000's)		
General Fund	\$0	\$0	\$0	\$0

EXPLANATION OF THE BILL

A summary of the bill prepared by the Appeals and Legal Services Division of the Department of Revenue is attached.

REVENUE ANALYSIS DETAIL

The bill is not expected to have an impact on state tax revenues.

Corporate Sales Factor to Exclude Derivatives

- Article 1, Section 4 would exclude certain derivative contracts from the calculation of the corporate franchise tax apportionment factor.
- No revenue change is assumed under the bill because the same amount of income and loss would be apportioned to Minnesota as under current law.
- It is assumed that only a small portion of derivative contract transactions are used to purchase actual goods and services. On the contrary, it is assumed that most of the buying and selling of derivatives is focused on market speculation.
- Due to the back and forth turnover of derivative contracts, it is impossible to determine who is hedging against risk and who is speculating. The person hedging and speculating can be the same person.

Partnership Audits

- Article 2 requires partnerships and partners to file amended returns reporting their share of any income adjustment resulting from a federal partnership audit. This is in response to a 2015 federal law change in the Bipartisan Budget Act of 2015.
- The estimated audit collections in the bill are the same as the baseline amount, which assumes no change in tax paid by the partners. Since the amount assessed on the partnership is assumed to be equal to the amount that would be assessed on the underlying partners, there is no change in revenue associated with the bill.

Minnesota Department of Revenue
 Tax Research Division
<https://www.revenue.state.mn.us/revenue-analyses>

**2020 DEPARTMENT OF REVENUE
POLICY/TECHNICAL BILL SUMMARY**



Appeals and Legal Services Division
600 North Robert Street
Saint Paul, Minnesota 55146-2220

HF 3389

ARTICLE 1: INCOME AND CORPORATE FRANCHISE TAXES

Section 1. Composite income tax returns for nonresident partners, shareholders, and beneficiaries. Amends Minn. Stat. § 289A.08, subd. 7, to clarify that the taxable income computed for purposes of composite returns includes the modifications for foreign income. Effective retroactively for taxable years beginning after December 31, 2015.

Section 2. Inflation adjustment. Amends Minn. Stat. § 290.0121, subd. 3, to remove superfluous language regarding the rounding of the inflation adjustment. This language is unnecessary because there is already rounding language in the previous sentence. Effective the day following final enactment.

Section 3. Losses. Amends Minn. Stat. § 290.0122, subd. 8, to make clear that only casualty and theft losses as defined in sections 165(c)(2), 165(c)(3) and 165(d) of the Internal Revenue Code, to the extent not compensated by insurance or otherwise, are deductible for state income tax purposes. It also makes clear that the limitations provided section 165(h), not including section 165(h)(5), and 67(b)(3) of the Internal Revenue Code also apply. Effective retroactively for taxable years beginning after December 31, 2018.

Section 4. Apportionment sales factor - exclude derivatives. Amends Minn. Stat. § 290.191, subd. 5, to exclude the sale of derivatives, such as options and swaps, from the sales apportionment factor. Effective the day following final enactment.

Section 5. Allowances. Amends Minn. Stat. § 290.92, subd. 5, to allow the department to calculate allowances for withholding purposes, to ensure the correct amount will be withheld for individual income tax purposes. The allowances must be computed in a form and manner prescribed by the commissioner. There will be allowances, under new paragraph (b), for dependents as defined in the Internal Revenue Code, excepting the allowances given for the federal dependent credit. There will also be allowances for the standard deduction or estimated itemized deductions, as long as the employee's spouse does not have the same, and any other allowances the commissioner feels is in the best interests of determining proper amounts to withhold for the payment of taxes under chapter 290. The changes relabel current paragraphs (2) and (3) as paragraphs (c) and (d), to follow the new structure of the subdivision. New paragraph (e) allows employers not to deduct and withhold for those employees that certify they will incur no tax liability under section 3402(n) of the Internal Revenue Code. Effective for taxable years beginning after December 31, 2019.

Section 6. Special limited adjustment. Amends Minn. Stat. § 290.993 to clarify that the special limited adjustment applies to individuals, estates, and trusts. Effective retroactively for taxable years beginning after December 31, 2017, and before January 1, 2019.

ARTICLE 2: PARTNERSHIP TAX

Sections 1-7 and 10-15. Various conforming changes. Amends Minn. Stat. §§ 270C.445, subd. 6; 289A.31, subd. 1; 289A.37, subd. 2; 289A.38, subs. 7-10; 289A.42; 289A.60, subd. 24; 290.31, subd. 1; 297F.17, subd. 6; 297G.16, subd. 7; and 469.319, subd. 4; to correct cross references and generally comport with the changes in other sections.

Section 8. Definitions relating to federal adjustments. Amends Minn. Stat. ch. 289A, by adding Minn. Stat. § 289A.381, which contains various definitions relating to the reporting of federal adjustments, and federal adjustments to partnership returns.

Section 9. Reporting adjustments following a partnership level audit. Amends Minn. Stat. ch. 289A, by adding Minn. Stat. § 289A.382, which provides for the reporting of federal adjustments following a partnership level audit by the IRS. By default, each partnership will be required to file a federal adjustments report related to federal changes, and submit the report to both Minnesota and its direct partners within 90 days. Each partnership reporting changes must also file amended composite and withholding reports for nonresident partners within 180 days. Each direct partner, other than a tiered partners, receiving an adjustment report as described above is also required to make a federal adjustment report and pay any additional tax due within 180 days of the final determination date.

Each partnership reporting federal adjustments after a partnership level audit is also eligible to make an election to pay the additional tax due to Minnesota at the entity level. A partnership making the election is required to do so on a federal adjustments report filed with the commissioner within 90 days of the final determination date. A partnership making the election must be able to determine and report the residency status of all direct and indirect individual partners, and pay tax on the properly allocated and apportioned share of all income at the highest marginal rate for its individual and corporate partners.

Effective date. This article is effective retroactively for taxable years beginning after December 31, 2017, except that for partnerships that make an election under Code of Federal Regulations, title 26, section 301.9100-22T, this article is effective retroactively and applies to the same tax periods to which the election relates.

ARTICLE 3: MISCELLANEOUS

Section 1. Paid preparer; depositing client refunds. Amends Minn. Stat. § 270C.445, subd. 3, to clarify that a paid tax preparer may not take control or ownership of a client's tax refund regardless of the manner in which the refund is paid. Effective the day following final enactment.

Section 2. Accelerated tax payments. Amends Minn. Stat. § 289A.20, subd. 4, so that the June

accelerated sales tax payment percentages referred to in paragraph (c), clause (2), correctly match with the percentages specified in paragraph (b), clause (1). Effective the day following final enactment.

Section 3. Liquor gross receipts tax. Amends Minn. Stat. § 295.75, subd. 2, to clarify that a liquor retailer may (but is not required to) collect the liquor gross receipts tax from the purchaser and the tax is excluded from sales price for purposes of sales tax if separately stated on the receipt given to the purchaser. Effective the day following final enactment.

Section 4. Special fuel dealers. Amends Minn. Stat. § 296A.06, subd. 2, to clarify that “fuel dealer” refers to “special fuel dealer” as defined by Minn. Stat. § 296A.01, subd. 47. Effective the day following final enactment.

Section 5. Marketplace provider liability. Amends Minn. Stat. § 297A.66, subd. 3, by adding language to paragraph (a) clearly indicating that a marketplace provider is deemed to be the retailer or seller for all retail sales the marketplace provider facilitates. Effective the day following final enactment.

Section 6. Refusal to issue or renew; revocation. Amends Minn. Stat. § 297F.04, subd. 2, to clarify that any convictions for crimes involving tobacco, in addition to cigarettes, are reasons the commissioner must not issue or renew a license under chapter 297F. Effective the day following final enactment.

Section 7. Accelerated tax payments. Amends Minn. Stat. § 297F.09, subd. 10, to reorganize for readability and clarify the appropriate rates for the applicable years and penalty exceptions. Effective for estimated payments required to be made after the date of final enactment.

Section 8. Sufficiency of Notice. Deletes unnecessary language in section 297F.17, subd. 1, because sufficiency of notice is already covered in § 270C.33, subd. 8, which applies to all taxes administered by the commissioner. Effective for notices of tax assessment issued after the date of final enactment.

Section 9. Accelerated tax payments. Amends Minn. Stat. § 297G.09, subd. 9, to reorganize for readability and clarify the appropriate rates for the applicable years and penalty exceptions. Effective for estimated payments required to be made after the date of final enactment.

Section 10. Cigarette and tobacco distributor or subjobber license; suspension or revocation. Amends cross reference to Minn. Stat. § 297F.04 in Minn. Stat. § 609B.153 to be consistent with the amendment being made to Minn. Stat. § 297F.04, Subd. 2. Effective the day following final enactment.