

Policy and Technical Bill

February 6, 2023

	Yes	No
DOR Administrative Costs/Savings		X

Department of Revenue
Analysis of S.F. 783 (Rest) / H.F. 1372 (Gomez)

	Fund Impact			
	<u>F.Y. 2024</u>	<u>F.Y. 2025</u>	<u>F.Y. 2026</u>	<u>F.Y. 2027</u>
	(000's)			
General Fund	Negl.	Negl.	Negl.	Negl.

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

Since most provisions of the bill contain technical clarifications that do not change tax liability, the bill has no revenue impact, except for the following provision:

Stillborn Credit Eligibility (Article 1, Sec. 9)

- The estimate is based on information from 2020 income tax returns. About 200 credits were claimed in 2020.
- The bill changes eligibility for the credit in several ways. The number affected is unknown but is assumed to be negligible.
- Tax year impacts are allocated to the following fiscal year.

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

**2023 DEPARTMENT OF REVENUE
POLICY/TECHNICAL BILL SUMMARY**



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

SF 783/HF 1372

ARTICLE 1: INDIVIDUAL INCOME AND CORPORATE FRANCHISE TAXES

Sections 1, 2, and 5. Pass-through entity and composite tax income definitions. Section 1 amends Minn. Stat. § 289A.08, subd. 7, to move the definition of income to the new subdivision in Minn. Stat. § 290.01, subd. 19(h). Section 2 amends Minn. Stat. § 289A.08, subd. 7a, to move its definition of income to new subdivision in Minn. Stat. § 290.01, subd. 19(i). Section 5 creates two new paragraphs. Minn. Stat. § 290.01, subd. 19, (h) will be the new paragraph for the definition of income for purposes of the composite tax; and (i) will be the new paragraph for the definition of income for purposes of the pass-through entity tax. All described changes in the sections are effective for taxable years beginning after December 31, 2022.

Section 2. Pass-through entity. Amends Minn. Stat. § 289A.08, subd. 7a, to clarify that a qualifying entity for the pass-through entity tax includes only limited liability companies taxed as partnerships or S-corporations. The section also adds a new subdivision that does not allow an entity to claim a refund after the qualifying owner has claimed the credit on their return. When a qualifying owner has claimed the credit on their return, any refund must be claimed by the qualifying owner, and not by the qualifying entity. The described changes in section 2 are effective retroactively for taxable years beginning after December 31, 2020.

Section 3. Reporting and payment requirements for partnerships and tiered partners. Amends Minn. Stat. § 289A.382, subd.2, to clarify that the pass-through entity must file an amended return and pay any additional amounts in the event of a federal partnership audit. Effective retroactively for taxable years beginning after December 31, 2020.

Section 4. Nonresident withholding tax refund clarification. Amends Minn. Stat. § 289A.50 by adding a new subd. 3a, to clarify that when there is an overpayment of nonresident withholding tax by a partnership or S corporation, a refund allowable under that section to the payor is limited to the amount of the overpayment that was not deducted and withheld from the shares of the payor's partners or shareholders. Effective the day following final enactment.

Section 6. Credit for taxes paid. Adds Minn. Stat. § 290.06, subd. 22, para. (m), so that sole members of an entity disregarded for income tax purposes can receive credit for tax paid by the entity in another state. Effective for taxable years beginning after December 31, 2022.

Sections 7 and 8. Credit allowed. Amends Minn. Stat. § 290.0671, subs. 1 and 7, of the working family credit to clarify that only the maximum credit amount is phased out if the

taxpayer's adjusted gross income or earned income, whichever is greater, is in excess of the threshold amount in paragraph (h). The inflation adjustment for the credit is also updated for consistency. Effective the day following final enactment.

Section 9. Credit allowed. Amends Minn. Stat. § 290.0685, subd. 1, to allow an income tax credit for eligible individuals experience a still birth outside of Minnesota and receive a certificate similar to certification of birth resulting in stillbirth under section 144.2141, subd. 1. Effective for taxable years beginning after December 31, 2022.

Section 10. Miscellaneous withholding arrangements. Amends Minn. Stat. § 290.92, subd. 20, to establish a withholding rate of 6.25 percent, or the rate directed by the recipient, for periodic payments and nonperiodic distributions such as annuities and IRA distributions on demand. Makes non-substantive organizational changes for readability and clarity. Effective for periodic payments and nonperiodic distributions made on or after the day following final enactment. For periodic payments and nonperiodic distributions made on or after the day following final enactment but before January 1, 2024, the commissioner of revenue must not assess penalties relating to this amendment against a payor who complies with Minn. Stat. 2021 Supplement, § 290.92, subd. 20.”

Section 11. Surety deposits; out-of-state contractors. Amends Minn. Stat. § 290.9705, subd. 1(b), to clarify that the obligation to withhold surety deposits on construction contracts exceeding \$50,000 applies to payments to construction companies that are corporations and cooperatives that are not organized under Minnesota law. Effective the day following final enactment.

Section 12. Property tax refund, homestead application. Amends Minn. Stat. § 290A.03, subd. 13, by changing the deadline for filing of a homestead application, and for the property to be classified as homestead, from December 15 to December 31, for purposes of the property tax refund, to match the deadlines for homestead applications for purposes of the homestead market value exclusion. Effective retroactively for refund claims based on property taxes payable in 2022 and thereafter.

ARTICLE 2: FIRE AND POLICE STATE AIDS

Section 1. Compliance report due dates. Amends Minn. Stat. § 6.495, subd. 3, to provide due dates for financial compliance reports submitted by the state auditor to the commissioner of revenue. The reports certify which relief associations are eligible to receive fire state aid. Effective for aids payable in calendar year 2024 and thereafter.

Section 2. Apportionment agreement definition. Amends Minn. Stat. § 477B.01, by adding a new subd. 1a, to define “apportionment agreement” for the purposes of fire state aid. Effective for aids payable in calendar year 2024 and thereafter.

Section 3. Fire department definition. Amends Minn. Stat. § 477B.01, subd. 5, to add joint powers entities and fire protection special taxing districts to the definition of “fire department” for purposes of Chapter 477B. The latter is cross-referenced with Chapter 144F, that added authority to create fire protection special taxing districts in 2021. Effective for aids payable in calendar year 2024 and thereafter.

Section 4. Joint powers entity definition. Amends Minn. Stat. § 477B.01, by adding a new subd. 7a, that defines a joint powers entity for purposes of fire state aid. Effective for aids payable in calendar year 2024 and thereafter.

Section 5. Municipality definition. Amends Minn. Stat. § 477B.01, subd. 10, to include joint powers entities and fire protection special taxing districts in the definition of “municipality” for purposes of fire state aid. Park districts and the University of Minnesota are eliminated from the definition. These two entities do not receive fire state aid, have not received it in the past, and are not anticipated to qualify for fire state aid in the future. Effective for aids payable in calendar year 2024 and thereafter.

Section 6. Secretary definition. Amends Minn. Stat. § 477B.01, subd. 11, to include the secretary or financial manager of a joint powers board or fire protection special taxing district board in the definition of “secretary” for purposes of fire state aid. Effective for aids payable in calendar year 2024 and thereafter.

Section 7. Fire department criteria. Amends Minn. Stat. § 477B.02, subd. 2, to require a fire department to have a fire department identification number issued by the state fire marshal to receive fire state aid. Effective for aids payable in calendar year 2024 and thereafter.

Section 8. Fire department personnel and benefits criteria. Amends Minn. Stat. § 477B.02, subd. 3, to eliminate outdated personnel criteria for fire departments to receive fire state aid. Language is also added to clarify that a fire department may not be associated with more than one retirement benefit plan at the same time. Effective for aids payable in calendar year 2024 and thereafter.

Section 9. Public safety answering point requirement. Amends Minn. Stat. § 477B.02, by adding a new subd. 4a, requiring a fire department to be dispatched by a public safety answering point to qualify for fire state aid. Effective for aids payable in calendar year 2024 and thereafter.

Section 10. Documentation filing requirements. Amends Minn. Stat. § 477B.02, subd. 5, to clarify the documentation required to be filed with the commissioner by municipalities and independent nonprofit firefighting corporations already receiving fire state aid, and those applying for the first time. For those already receiving aid, notifications of contract formation and termination, and notice of fire department dissolution, must be provided to the commissioner within 60 days of the event. For departments applying for fire state aid for the first time, notice of apportionment agreements, joint powers agreements, and fire protection special taxing district resolutions or agreements must be filed with the commissioner. If any of the above-listed documents are updated, the updated version must also be filed with the commissioner within 60 days of the update. In the event a fire department is located in an unorganized territory, the county auditor is also required to provide information that the commissioner needs to apportion the estimated market value of the fire department service area. Effective for aids payable in calendar year 2024 and thereafter.

Section 11. PERA certification. Amends Minn. Stat. § 477B.02, subd. 8, to provide that the executive director of the Public Employees Retirement Association (PERA) only needs to certify

to the commissioner of revenue which fire departments began or terminated participation in the voluntary statewide volunteer firefighter retirement plan since the previous certification. Requires the certifications to include the number of active volunteer firefighters under Section 17 477B.03, subd. 5, information required for aid calculation. Also amends Minn. Stat. 477B.03, subd. 5, to provide the due date for PERA to certify the number of active firefighters to the commissioner of revenue and to the state auditor, and clarifies that the certification requirement applies to all municipalities and independent nonprofit firefighting corporations participating in the voluntary statewide volunteer firefighter retirement plan, not just to relief associations that were recently terminated because benefits started being provided by the statewide plan. Effective for aids payable in calendar year 2024 and thereafter.

Section 12. Fire department certification to commissioner. Amends Minn. Stat. § 477B.02, subd. 9, to require the municipal clerk or the secretary to annually certify a fire department's service area and whether all the qualification criteria for fire state aid are met. The municipal clerk or secretary must send a copy of the certification to the fire chief within five business days of filing with the commissioner. Effective for aids payable in calendar year 2024 and thereafter.

Section 13. Fire state aid penalty for failure to file or correct certification. Amends Minn. Stat. § 477B.02, subd. 10, to establish a penalty for failure to file the certification required under subdivision 9 on or before March 1st or if a corrective certification is not filed by March 15 or more than 30 days after the date the commissioner's notice of rejection. Effective for aids payable in calendar year 2024 and thereafter.

Sections 14 and 22. Certain tax credits and calculation of amount of fire and police state aid available for apportionment. Amends Minn. Stat. § 477B.03, subd. 2, and § 477C.03, subd. 2, to clarify that when the Department annually calculates the amount of fire and police state aid available for apportionment based on insurance premium data, the calculation is not affected by premium tax credits received under 297I.20, subd. 3 (historic structure insurance premium tax credit), subd. 4 (film production insurance premium tax credit), and subd. 5 (Minnesota housing insurance premium tax credit). This change aligns Chapters 477B and 477C with Minn. Stat. § 297I.20, subs. 3, 4, and 5, which state that the credits do not affect the calculation. These amendments are effective the day following final enactment. Minn. Stat. § 477C.03, subd. 2, is also amended to delete vague language describing adjustments to aid payments. This amendment is effective for aids payable in calendar year 2024 and thereafter.

Section 15. Population data. Amends Minn. Stat. § 477B.03, subd. 3, to require the commissioner to use the most recent population estimates from the state demographer, rather than federal census data, to calculate fire state aid. Also requires the commissioner to use the estimated market value (EMV) property figures for the assessment year immediately prior to aid distribution in any calculations requiring EMV figures. Effective for aids payable in calendar year 2024 and thereafter.

Section 16. Fire state aid initial allocation amount. Amends Minn. Stat. § 477B.03, subd. 4(b), to make clear that fire state aid allocation for those providing fire protection to more than one municipality includes those that enter into joint power agreements or resolutions, not just those that enter into service contracts. Effective for aids payable in calendar year 2024 and thereafter.

Section 17. Fire state aid minimum allocation amount. Amends Minn. Stat. § 477B.03, subd. 5(e), to make clear that the minimum fire state aid allocation amount, that is based on the number of active volunteer firefighters, for a municipality or independent nonprofit firefighting corporation that provides retirement coverage under Chapter 353G equals the number of active firefighters covered by the retirement plan within 30 days of the date the municipality or independent nonprofit firefighting corporation begins coverage in the plan, not to exceed 30. Effective for aids payable in calendar year 2024 and thereafter.

Section 18. Fire state aid appeal. Amends Minn. Stat. § 477B.03, subd. 7, to provide that objections to fire state aid apportionments may only be raised within 60 days after the apportioned fire state aid is paid. There was previously no timeline for objections. Effective for aids payable in calendar year 2024 and thereafter.

Section 19. Timing and direction of fire state aid payments. Amends Minn. Stat. § 477B.04, subd. 1, to clarify that aid is withheld for noncompliance with financial reporting requirements. If the Office of the State Auditor certifies that the requirements have been met, the commissioner of revenue must make the payments within ten business days of receipt of the certification. Language also clarifies that fire state aid payments will be distributed to the largest municipality in population located within a joint powers entity and within the fire department service area of independent nonprofit firefighting corporations. If a joint powers entity has designated an agency as its fiscal agent, however, the payments will be distributed to that agency regardless of population size. Effective for aids payable in calendar year 2024 and thereafter.

Section 20. Fire state aid amount corrections. Amends Minn. Stat. § 477B.04, by adding a new subd. 4, which specifies how clerical errors that resulted in incorrect overpayments or underpayments of fire state aid are adjusted. Adjustments must occur within three years after a payment is issued. Effective for aids payable in calendar year 2024 and thereafter.

Section 21. Police state aid penalty for failure to file or correct certification. Amends Minn. Stat. § 477C.02, subd. 4, to establish a penalty for failure to file the certification required under subdivisions 1 or 2 on or before March 1st or if a corrective certification is not filed by March 15 or more than 30 days after the date the commissioner's notice of rejection. Effective for aids payable in calendar year 2024 and thereafter.

Section 23. Police state aid appeal. Amends Minn. Stat. § 477C.03, subd. 5, to provide that objections to police state aid apportionments may only be raised within 60 days after the apportioned police state aid is paid. There was previously no timeline for objections. Effective for aids payable in calendar year 2024 and thereafter.

Section 24. Police state aid amount corrections. Amends Minn. Stat. § 477C.04, by adding a new subd. 4, which specifies how clerical errors that resulted in incorrect overpayments and underpayments of police state aid are adjusted. Adjustments must occur within three years after a payment issued. Effective for aids payable in calendar year 2024 and thereafter.

Section 25. Repealer. An uncodified provision repeals Minn. Stat. § 477B.02, subd. 4. This subdivision details outdated equipment requirements for fire departments that are no longer used in determining qualification for fire state aid. Minn. Stat. § 477B.03, subd. 6, is also repealed.

This subdivision contained vague language describing aid payment adjustments. It is no longer needed with the fire state aid correction language added to Minn. Stat. § 477B.04. Effective for aids payable in calendar year 2024 and thereafter.

ARTICLE 3: DATA PRACTICES

Section 1. Disclosure of Welfare Data. Amends Minn. Stat. § 13.46, subd. 2(a)(8), to clarify that welfare data is able to be disclosed to the Minnesota Department of Revenue to prepare the databases for reports required under Minn. Stat. § 270C.13 and 2008 Minn. Laws, chap. 366, art. 17, § 6. Effective the day following final enactment.

Section 2. Tax Incidence Study Report. Amends Minn. Stat. § 270C.13, subd. 1, to allow the commissioner to request information from any state officer or agency for the Minnesota Department of Revenue's reports under Minn. Stat. § 270C.13. The state officer or agency shall provide the data requested to the extent permitted by law. Effective the day following final enactment.

Section 3. Publication of tax preparers. Amends § 270C.446, subd. 2(a), to require publication of a paid tax preparer who has been assessed a penalty in excess of \$1,000 for failing to provide a Preparer Tax Identification Number on returns they prepare and file for others. Effective for returns filed after December 31, 2023.

Section 4. Owner or managing agent to furnish rent certificate. Amends Minn. Stat. § 290A.19. The Department, after consulting with affected representatives, can require owners and managing agents to e-file copies of certificates of rent paid (CRPs) issued to renters. The change supplements that authority by letting the Department require CRP issuers to submit their taxpayer identification number to the Department when e-filing the CRPs. Effective for refund claims based on rent paid in 2023 and thereafter.

Sections 5 and 6. Background Check; Access to Federal Tax Information. Amends Minn. Stat. § 299C.76, subs. 1 and 2, to address the feedback that the Minnesota Bureau of Criminal Apprehension received from the U.S. Department of Justice / FBI in order to satisfy the requirements under Pub. L. 92-544. Effective the day following final enactment.

Section 7. Homestead Property Tax Burden Report. Amends 2008 Minn. Laws, chap. 366, art. 17, § 6, to allow the commissioner to request information from any state officer or agency. The state officer or agency shall provide the data requested to the extent permitted by law. Effective the day following final enactment.

ARTICLE 4: MISCELLANEOUS

Sections 1 and 2. Population used in tribal tax agreements. Amends Minn. Stat. § 270C.19, subs. 1 and 2, to provide that the population used to compute refunds and payments under tax agreements between the commissioner of revenue and tribal governments is the number of enrolled members of the tribe who live on or adjacent to the reservation as reported to the commissioner by the tribe. Current law provides that the on-or-adjacent-to population must be

obtained from a Bureau of Indian Affairs report that is no longer submitted by the tribes or published by the Bureau.

Also adds language that states that refunds are meant to approximate the tax paid on the reservation by tribal members, or the amount they would have paid on the reservation if there was no agreement. Also gives instructions to the commissioner on how estimates should be calculated.

Effective retroactively for agreements entered into or amended after December 31, 2022.

Section 3. Health care provider. Amends Minn. Stat. § 295.50, subd. 4, to clarify that a health care provider, for MinnesotaCare Tax purposes, does not include a person or entity that receives all their payments for patient services from a source of funds that is excluded from tax under sections 295.50 to 295.59. Currently, the statute includes the word “exempt” but not “excluded.” Finally, the amendment replaces the words “this chapter” with “sections 295.50 to 295.59” since Chapter 295 also includes the unrelated liquor gross receipts tax, and this provision is not applicable to that tax. Effective the day following final enactment.

Section 4. Surcharge publication date. Amends Minn. Stat. § 296A.083, subd. 3, to move the annual deadline for publication of the debt service surcharge from April 1 to May 1. This change is necessary because the Department cannot publish the debt service surcharge until Minnesota Management and Budget publishes its debt service forecast, which is due on April 1 of each year. The amendment also removes outdated language from the subdivision. Effective the day following final enactment.

Section 5. Definition of “State.” Amends Minn. Stat. § 297A.61, subd. 29, to conform with the recently amended Streamlined Sales Tax definition of “state.” This amendment provides that, for sales and use tax purposes, “state” also includes any territory of the United States. Effective for sales and purchases made after June 30, 2023.