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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3840

04/07/2016 Authored by Hoppe, Thissen, Albright and Applebaum
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; providing a Minnesota housing tax credit against income and
1.3 insurance taxes; requiring reports; amending Minnesota Statutes 2014, section
1.4 297I.20, by adding a subdivision; proposing coding for new law in Minnesota
1.5 Statutes, chapters 290; 462A.

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

1.7 Section 1. **[290.0682] MINNESOTA HOUSING TAX CREDIT.**

1.8 Subdivision 1. **Definitions.** For purposes of this section:

1.9 (1) "taxpayer" means a taxpayer as defined in section 290.01, subdivision 6, or a
1.10 taxpayer as defined in section 297I.01, subdivision 16; and

1.11 (2) terms defined in section 462A.38 have the meanings given in that section.

1.12 Subd. 2. **Credit allowed.** (a) A taxpayer is allowed a Minnesota housing tax credit
1.13 against the taxes imposed under this chapter and chapter 297I. The credit equals the
1.14 amount allocated to the taxpayer and indicated on the eligibility statement issued to the
1.15 taxpayer under section 462A.38. The taxpayer may claim the amount allocated in the year
1.16 in which the credit is allocated and in each of the five following taxable years.

1.17 (b) A taxpayer eligible for the credit must submit to the commissioner a copy of
1.18 the eligibility statement issued by the agency or suballocator with respect to the qualified
1.19 Minnesota project, a copy of the project owner's tax return that must be filed as required
1.20 under chapter 289A, and any other information required by the commissioner.

1.21 (c) Credits granted to a partnership, a limited liability company taxed as a
1.22 partnership, S corporation, or multiple owners of property are passed through to the
1.23 partners, members, shareholders, or owners, respectively, pro rata to each partner, member,
1.24 shareholder, or owner based on the partner's, member's, shareholder's, or owner's share of

2.1 the entity's assets or as specially allocated in the organizational documents as of the last
 2.2 day of the taxable year in which the eligibility statement was issued.

2.3 Subd. 3. **Limitations; carryover.** (a) A credit allowed under this section may not
 2.4 exceed liability for tax under this chapter and chapter 297I.

2.5 (b) If the amount of the credit under this section exceeds the limitation under
 2.6 paragraph (a), the excess is a Minnesota housing tax credit carryover to each of the 11
 2.7 succeeding taxable years. The entire amount of the excess unused credit for the taxable
 2.8 year must be carried first to the earliest of the taxable years to which the credit may be
 2.9 carried and then to each successive year to which the credit may be carried.

2.10 Subd. 4. **Assignment.** (a) The recipient of a Minnesota housing tax credit may
 2.11 assign the credit to another taxpayer, who is then allowed the credit under this section or
 2.12 section 297I.20, subdivision 4. The commissioner shall prescribe the forms necessary for
 2.13 claiming a credit by assignment.

2.14 (b) All or any portion of tax credits issued under this section may be assigned and
 2.15 reassigned to another taxpayer without regard to ownership in the qualified Minnesota
 2.16 project and without regard to any other allocation of credits, depreciation, profits, or losses
 2.17 under the entities' organizational documents. The assignor and assignee of tax credits
 2.18 must notify the commissioner of the assignment in the form and manner as specified by
 2.19 the commissioner.

2.20 Subd. 5. **Audit powers.** Notwithstanding the eligibility statement issued by the
 2.21 agency or a sublocator under section 462A.38, the commissioner may utilize any audit
 2.22 and examination powers under chapter 270C or 289A, to the extent necessary to verify
 2.23 that the taxpayer is eligible for the credit and to assess for the amount of any improperly
 2.24 claimed credit and that the owner is in compliance with the compliance agreement.

2.25 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 2.26 December 31, 2016.

2.27 Sec. 2. Minnesota Statutes 2014, section 297I.20, is amended by adding a subdivision
 2.28 to read:

2.29 Subd. 4. **Minnesota housing tax credit.** An insurance company may claim a
 2.30 credit against the premiums tax imposed under this chapter equal to the amount indicated
 2.31 on the eligibility statement issued to the company, or to a person who has assigned the
 2.32 credit to the insurance company, as provided under section 290.0682, subdivision 4. If
 2.33 the amount of the credit exceeds the liability for tax under this chapter, the excess is a
 2.34 Minnesota housing tax credit carryover to each of the 11 succeeding taxable years. The
 2.35 entire amount of the excess unused credit for the taxable year must be carried first to the

3.1 earliest of the taxable years to which the credit may be carried and then to each successive
 3.2 year to which the credit may be carried. An insurance company may assign the credit to
 3.3 another taxpayer, as provided in section 290.0682, subdivision 4. This credit does not
 3.4 affect the calculation of police and fire aid under section 69.021.

3.5 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 3.6 December 31, 2016.

3.7 Sec. 3. **[462A.38] MINNESOTA HOUSING TAX CREDIT.**

3.8 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms
 3.9 have the meanings given unless the context clearly requires otherwise.

3.10 (b) "Compliance agreement" means an agreement:

3.11 (1) between the owner of a qualified Minnesota project and the agency or suballocator;

3.12 (2) that is recorded as an affordable housing restriction on the real property on which
 3.13 the qualified Minnesota project is located; and

3.14 (3) that requires the project to be operated under the requirements of this section
 3.15 for the compliance period.

3.16 The agreement may be subordinated to the lien of a bank or other institutional lender
 3.17 providing financing to the qualified Minnesota project upon the request of the bank
 3.18 or lender.

3.19 (c) "Compliance period" means the 15-year period beginning with the first taxable
 3.20 year a credit is allowed under this section.

3.21 (d) "Eligibility statement" means a statement issued by the agency or suballocator
 3.22 to the owner certifying that a project is a qualified Minnesota project and documenting
 3.23 allocation of the Minnesota housing tax credit. The eligibility statement must specify the
 3.24 annual amount of the credit allocated to the project for the taxable year and for the five
 3.25 following taxable years and be in a form prescribed by the commissioner of the agency, in
 3.26 consultation with the commissioner of revenue.

3.27 (e) "Federal low-income housing tax credit" means the federal tax credit provided in
 3.28 section 42 of the Internal Revenue Code.

3.29 (f) "Greater Minnesota" means the area of Minnesota located outside of the
 3.30 metropolitan area as defined in section 473.121, subdivision 2.

3.31 (g) "Internal Revenue Code" has the meaning given in section 290.01, subdivision 31.

3.32 (h) "Owner" means the owner of a qualified Minnesota project.

3.33 (i) "Qualified Minnesota project" means a low-income housing project that is:

3.34 (1) located in Minnesota;

4.1 (2) financed with tax-exempt bonds pursuant to section 42(i)(2) of the Internal
4.2 Revenue Code;

4.3 (3) determined by the agency to be eligible for a federal low-income housing tax
4.4 credit without regard to whether or not a federal low-income housing credit is allocated
4.5 to the project; and

4.6 (4) a project for which the owner has entered into a compliance agreement with the
4.7 agency or the suballocator that is enforceable by state and local agencies.

4.8 (j) "Suballocator" means an allocator, other than the agency, of low-income federal
4.9 housing credits and credits under this section as provided in section 462A.222.

4.10 (k) "Taxpayer" has the meaning given in section 290.0682, subdivision 1, paragraph
4.11 (c).

4.12 (l) Terms not otherwise defined in this subdivision have the meanings given in
4.13 section 42 of the Internal Revenue Code.

4.14 Subd. 2. **Minnesota housing tax credit; allocation.** (a) The agency and all
4.15 suballocators may annually allocate credits during a six-year period beginning January 1,
4.16 2017, and ending December 31, 2022. The total amount of credits that may be allocated
4.17 each year is the sum of:

4.18 (1) for the year beginning January 1, 2017, and ending December 31, 2017, only,
4.19 \$7,000,000;

4.20 (2) any unused Minnesota housing tax credits, if any, for the preceding calendar
4.21 years; and

4.22 (3) any Minnesota housing tax credits returned to the agency or a suballocator by the
4.23 owner of a qualified Minnesota project and available for reallocation under subdivision 5,
4.24 paragraph (b).

4.25 (b) The agency shall allocate credits only to qualified Minnesota projects that the
4.26 agency determines:

4.27 (1) are eligible for the federal low-income housing tax credit; and

4.28 (2) are not financially feasible without the credit.

4.29 (c) The agency must allocate 50 percent of the total amount allocated to qualified
4.30 Minnesota projects in greater Minnesota.

4.31 (d) The allocation to any one qualified Minnesota project equals one-sixth of the total
4.32 federal low-income housing tax credit allowable over the ten-year federal credit period
4.33 without regard to whether the project is allocated a federal low-income housing tax credit.

4.34 Subd. 3. **Credit allowed.** When the agency or a suballocator allocates a credit
4.35 amount to the owner of a project, the agency or suballocator must issue an eligibility
4.36 statement to the owner. The owner may claim the amount allocated in the year in which

5.1 the credit is allocated and in each of the five following taxable years, or may assign the
 5.2 credit as provided in section 290.0682.

5.3 Subd. 4. **Credit duration.** Except for unused credits carried forward under section
 5.4 290.0682, the agency may allocate a credit and issue an eligibility statement to a taxpayer
 5.5 for a Minnesota housing tax credit for a project one time, with the credit allowed in the
 5.6 taxable year in which the agency issues the eligibility statement and the following five
 5.7 taxable years.

5.8 Subd. 5. **Recapture.** (a) If the agency or suballocator finds that a qualified project
 5.9 issued an eligibility statement is not meeting the terms of the compliance agreement, the
 5.10 owner must repay the credit awarded to the project by the agency or the suballocator. No
 5.11 holder of the credit other than the owner is responsible for repayment of the credit.

5.12 (b) Amounts repaid under this subdivision before January 1, 2022, are available for
 5.13 reallocation as provided in subdivision 2.

5.14 (c) Amounts repaid under this subdivision after December 31, 2021, are credited
 5.15 to the general fund.

5.16 Subd. 6. **Report.** (a) By January 15 of each year following a year in which the
 5.17 agency allocates a credit under this section, the agency shall submit a written report to the
 5.18 chairs and ranking minority members of the committees of the legislature with jurisdiction
 5.19 over housing and taxes, in compliance with sections 3.195 and 3.197, on the success and
 5.20 efficiency of the Minnesota housing tax credit program.

5.21 (b) The report must:

5.22 (1) specify the number of qualified Minnesota projects that were allocated tax credits
 5.23 in the year and the total number of housing units supported in each project;

5.24 (2) provide descriptive information about each qualified Minnesota housing project
 5.25 that was allocated credits, including:

5.26 (i) the geographic location of the project; and

5.27 (ii) demographic information about residents intended to be served by the project,
 5.28 including household type, income levels, and rents or set-asides; and

5.29 (3) provide housing market and demographic information that demonstrates how the
 5.30 qualified Minnesota projects that were allocated tax credits address the need for affordable
 5.31 housing in the communities they serve as well as information about any remaining
 5.32 disparities in affordability of housing in those communities.

5.33 **EFFECTIVE DATE.** This section is effective the day following final enactment,
 5.34 with credit allocations allowed for taxable years beginning after December 31, 2016.

5.35 Sec. 4. **PURPOSE STATEMENT; TAX EXPENDITURES.**

6.1 Subdivision 1. **Authority.** This section is intended to fulfill the requirement under
6.2 Minnesota Statutes, section 3.192, that a bill creating, renewing, or continuing a tax
6.3 expenditure must include a statement of intent that clearly provides the purpose for the tax
6.4 expenditure and a standard or goal against which its effectiveness may be measured.

6.5 Subd. 2. **Minnesota housing tax credit.** The provisions of sections 1 to 3 allowing
6.6 a Minnesota housing tax credit are intended to increase development and availability of
6.7 low-income housing in Minnesota. The standards against which the effectiveness of the
6.8 credit is to be measured are the number of new residential units that became available to
6.9 low-income households in projects that are allocated Minnesota housing credits, compared
6.10 with the number of new residential units that became available to low-income households in
6.11 calendar year 2016, and also the increase in the number of residential units in high-shortage
6.12 areas separately for the seven-county metropolitan area and greater Minnesota.