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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 1059

03/14/2011 Authored by Loon, Lanning and Woodard
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 an equity and opportunity in education tax credit;
1.3 amending Minnesota Statutes 2010, section 290.01, subdivisions 19a, 19c;
1.4 proposing coding for new law in Minnesota Statutes, chapter 290.

1.5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:**

1.6 Section 1. Minnesota Statutes 2010, section 290.01, subdivision 19a, is amended to
1.7 read:

1.8 Subd. 19a. **Additions to federal taxable income.** For individuals, estates, and
1.9 trusts, there shall be added to federal taxable income:

1.10 (1)(i) interest income on obligations of any state other than Minnesota or a political
1.11 or governmental subdivision, municipality, or governmental agency or instrumentality
1.12 of any state other than Minnesota exempt from federal income taxes under the Internal
1.13 Revenue Code or any other federal statute; and

1.14 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue
1.15 Code, except:

1.16 (A) the portion of the exempt-interest dividends exempt from state taxation under
1.17 the laws of the United States; and

1.18 (B) the portion of the exempt-interest dividends derived from interest income
1.19 on obligations of the state of Minnesota or its political or governmental subdivisions,
1.20 municipalities, governmental agencies or instrumentalities, but only if the portion of the
1.21 exempt-interest dividends from such Minnesota sources paid to all shareholders represents
1.22 95 percent or more of the exempt-interest dividends, including any dividends exempt
1.23 under subitem (A), that are paid by the regulated investment company as defined in section

2.1 851(a) of the Internal Revenue Code, or the fund of the regulated investment company as
2.2 defined in section 851(g) of the Internal Revenue Code, making the payment; and

2.3 (iii) for the purposes of items (i) and (ii), interest on obligations of an Indian tribal
2.4 government described in section 7871(c) of the Internal Revenue Code shall be treated as
2.5 interest income on obligations of the state in which the tribe is located;

2.6 (2) the amount of income, sales and use, motor vehicle sales, or excise taxes paid
2.7 or accrued within the taxable year under this chapter and the amount of taxes based on
2.8 net income paid, sales and use, motor vehicle sales, or excise taxes paid to any other
2.9 state or to any province or territory of Canada, to the extent allowed as a deduction
2.10 under section 63(d) of the Internal Revenue Code, but the addition may not be more
2.11 than the amount by which the itemized deductions as allowed under section 63(d) of
2.12 the Internal Revenue Code exceeds the amount of the standard deduction as defined in
2.13 section 63(c) of the Internal Revenue Code, disregarding the amounts allowed under
2.14 sections 63(c)(1)(C) and 63(c)(1)(E) of the Internal Revenue Code. For the purpose of
2.15 this paragraph, the disallowance of itemized deductions under section 68 of the Internal
2.16 Revenue Code of 1986, income, sales and use, motor vehicle sales, or excise taxes are
2.17 the last itemized deductions disallowed;

2.18 (3) the capital gain amount of a lump-sum distribution to which the special tax under
2.19 section 1122(h)(3)(B)(ii) of the Tax Reform Act of 1986, Public Law 99-514, applies;

2.20 (4) the amount of income taxes paid or accrued within the taxable year under this
2.21 chapter and taxes based on net income paid to any other state or any province or territory
2.22 of Canada, to the extent allowed as a deduction in determining federal adjusted gross
2.23 income. For the purpose of this paragraph, income taxes do not include the taxes imposed
2.24 by sections 290.0922, subdivision 1, paragraph (b), 290.9727, 290.9728, and 290.9729;

2.25 (5) the amount of expense, interest, or taxes disallowed pursuant to section 290.10
2.26 other than expenses or interest used in computing net interest income for the subtraction
2.27 allowed under subdivision 19b, clause (1);

2.28 (6) the amount of a partner's pro rata share of net income which does not flow
2.29 through to the partner because the partnership elected to pay the tax on the income under
2.30 section 6242(a)(2) of the Internal Revenue Code;

2.31 (7) 80 percent of the depreciation deduction allowed under section 168(k) of the
2.32 Internal Revenue Code. For purposes of this clause, if the taxpayer has an activity that
2.33 in the taxable year generates a deduction for depreciation under section 168(k) and the
2.34 activity generates a loss for the taxable year that the taxpayer is not allowed to claim for
2.35 the taxable year, "the depreciation allowed under section 168(k)" for the taxable year is
2.36 limited to excess of the depreciation claimed by the activity under section 168(k) over the

3.1 amount of the loss from the activity that is not allowed in the taxable year. In succeeding
 3.2 taxable years when the losses not allowed in the taxable year are allowed, the depreciation
 3.3 under section 168(k) is allowed;

3.4 (8) 80 percent of the amount by which the deduction allowed by section 179 of the
 3.5 Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal
 3.6 Revenue Code of 1986, as amended through December 31, 2003;

3.7 (9) to the extent deducted in computing federal taxable income, the amount of the
 3.8 deduction allowable under section 199 of the Internal Revenue Code;

3.9 (10) the exclusion allowed under section 139A of the Internal Revenue Code for
 3.10 federal subsidies for prescription drug plans;

3.11 (11) the amount of expenses disallowed under section 290.10, subdivision 2;

3.12 (12) the amount deducted for qualified tuition and related expenses under section
 3.13 222 of the Internal Revenue Code, to the extent deducted from gross income;

3.14 (13) the amount deducted for certain expenses of elementary and secondary school
 3.15 teachers under section 62(a)(2)(D) of the Internal Revenue Code, to the extent deducted
 3.16 from gross income;

3.17 (14) the additional standard deduction for property taxes payable that is allowable
 3.18 under section 63(c)(1)(C) of the Internal Revenue Code;

3.19 (15) the additional standard deduction for qualified motor vehicle sales taxes
 3.20 allowable under section 63(c)(1)(E) of the Internal Revenue Code;

3.21 (16) discharge of indebtedness income resulting from reacquisition of business
 3.22 indebtedness and deferred under section 108(i) of the Internal Revenue Code; ~~and~~

3.23 (17) the amount of unemployment compensation exempt from tax under section
 3.24 85(c) of the Internal Revenue Code; and

3.25 (18) the amount of the deduction under section 170 of the Internal Revenue Code
 3.26 that represents contributions to a qualified foundation for which a credit is received under
 3.27 section 290.0693.

3.28 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 3.29 December 31, 2010.

3.30 Sec. 2. Minnesota Statutes 2010, section 290.01, subdivision 19c, is amended to read:

3.31 Subd. 19c. **Corporations; additions to federal taxable income.** For corporations,
 3.32 there shall be added to federal taxable income:

3.33 (1) the amount of any deduction taken for federal income tax purposes for income,
 3.34 excise, or franchise taxes based on net income or related minimum taxes, including but not
 3.35 limited to the tax imposed under section 290.0922, paid by the corporation to Minnesota,

4.1 another state, a political subdivision of another state, the District of Columbia, or any
4.2 foreign country or possession of the United States;

4.3 (2) interest not subject to federal tax upon obligations of: the United States, its
4.4 possessions, its agencies, or its instrumentalities; the state of Minnesota or any other
4.5 state, any of its political or governmental subdivisions, any of its municipalities, or any
4.6 of its governmental agencies or instrumentalities; the District of Columbia; or Indian
4.7 tribal governments;

4.8 (3) exempt-interest dividends received as defined in section 852(b)(5) of the Internal
4.9 Revenue Code;

4.10 (4) the amount of any net operating loss deduction taken for federal income tax
4.11 purposes under section 172 or 832(c)(10) of the Internal Revenue Code or operations loss
4.12 deduction under section 810 of the Internal Revenue Code;

4.13 (5) the amount of any special deductions taken for federal income tax purposes
4.14 under sections 241 to 247 and 965 of the Internal Revenue Code;

4.15 (6) losses from the business of mining, as defined in section 290.05, subdivision 1,
4.16 clause (a), that are not subject to Minnesota income tax;

4.17 (7) the amount of any capital losses deducted for federal income tax purposes under
4.18 sections 1211 and 1212 of the Internal Revenue Code;

4.19 (8) the exempt foreign trade income of a foreign sales corporation under sections
4.20 921(a) and 291 of the Internal Revenue Code;

4.21 (9) the amount of percentage depletion deducted under sections 611 through 614 and
4.22 291 of the Internal Revenue Code;

4.23 (10) for certified pollution control facilities placed in service in a taxable year
4.24 beginning before December 31, 1986, and for which amortization deductions were elected
4.25 under section 169 of the Internal Revenue Code of 1954, as amended through December
4.26 31, 1985, the amount of the amortization deduction allowed in computing federal taxable
4.27 income for those facilities;

4.28 (11) the amount of any deemed dividend from a foreign operating corporation
4.29 determined pursuant to section 290.17, subdivision 4, paragraph (g). The deemed dividend
4.30 shall be reduced by the amount of the addition to income required by clauses (20), (21),
4.31 (22), and (23);

4.32 (12) the amount of a partner's pro rata share of net income which does not flow
4.33 through to the partner because the partnership elected to pay the tax on the income under
4.34 section 6242(a)(2) of the Internal Revenue Code;

4.35 (13) the amount of net income excluded under section 114 of the Internal Revenue
4.36 Code;

5.1 (14) any increase in subpart F income, as defined in section 952(a) of the Internal
5.2 Revenue Code, for the taxable year when subpart F income is calculated without regard to
5.3 the provisions of Division C, title III, section 303(b) of Public Law 110-343;

5.4 (15) 80 percent of the depreciation deduction allowed under section 168(k)(1)(A)
5.5 and (k)(4)(A) of the Internal Revenue Code. For purposes of this clause, if the taxpayer
5.6 has an activity that in the taxable year generates a deduction for depreciation under
5.7 section 168(k)(1)(A) and (k)(4)(A) and the activity generates a loss for the taxable year
5.8 that the taxpayer is not allowed to claim for the taxable year, "the depreciation allowed
5.9 under section 168(k)(1)(A) and (k)(4)(A)" for the taxable year is limited to excess of the
5.10 depreciation claimed by the activity under section 168(k)(1)(A) and (k)(4)(A) over the
5.11 amount of the loss from the activity that is not allowed in the taxable year. In succeeding
5.12 taxable years when the losses not allowed in the taxable year are allowed, the depreciation
5.13 under section 168(k)(1)(A) and (k)(4)(A) is allowed;

5.14 (16) 80 percent of the amount by which the deduction allowed by section 179 of the
5.15 Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal
5.16 Revenue Code of 1986, as amended through December 31, 2003;

5.17 (17) to the extent deducted in computing federal taxable income, the amount of the
5.18 deduction allowable under section 199 of the Internal Revenue Code;

5.19 (18) the exclusion allowed under section 139A of the Internal Revenue Code for
5.20 federal subsidies for prescription drug plans;

5.21 (19) the amount of expenses disallowed under section 290.10, subdivision 2;

5.22 (20) an amount equal to the interest and intangible expenses, losses, and costs paid,
5.23 accrued, or incurred by any member of the taxpayer's unitary group to or for the benefit
5.24 of a corporation that is a member of the taxpayer's unitary business group that qualifies
5.25 as a foreign operating corporation. For purposes of this clause, intangible expenses and
5.26 costs include:

5.27 (i) expenses, losses, and costs for, or related to, the direct or indirect acquisition,
5.28 use, maintenance or management, ownership, sale, exchange, or any other disposition of
5.29 intangible property;

5.30 (ii) losses incurred, directly or indirectly, from factoring transactions or discounting
5.31 transactions;

5.32 (iii) royalty, patent, technical, and copyright fees;

5.33 (iv) licensing fees; and

5.34 (v) other similar expenses and costs.

6.1 For purposes of this clause, "intangible property" includes stocks, bonds, patents, patent
6.2 applications, trade names, trademarks, service marks, copyrights, mask works, trade
6.3 secrets, and similar types of intangible assets.

6.4 This clause does not apply to any item of interest or intangible expenses or costs paid,
6.5 accrued, or incurred, directly or indirectly, to a foreign operating corporation with respect
6.6 to such item of income to the extent that the income to the foreign operating corporation
6.7 is income from sources without the United States as defined in subtitle A, chapter 1,
6.8 subchapter N, part 1, of the Internal Revenue Code;

6.9 (21) except as already included in the taxpayer's taxable income pursuant to clause
6.10 (20), any interest income and income generated from intangible property received or
6.11 accrued by a foreign operating corporation that is a member of the taxpayer's unitary
6.12 group. For purposes of this clause, income generated from intangible property includes:

- 6.13 (i) income related to the direct or indirect acquisition, use, maintenance or
6.14 management, ownership, sale, exchange, or any other disposition of intangible property;
6.15 (ii) income from factoring transactions or discounting transactions;
6.16 (iii) royalty, patent, technical, and copyright fees;
6.17 (iv) licensing fees; and
6.18 (v) other similar income.

6.19 For purposes of this clause, "intangible property" includes stocks, bonds, patents, patent
6.20 applications, trade names, trademarks, service marks, copyrights, mask works, trade
6.21 secrets, and similar types of intangible assets.

6.22 This clause does not apply to any item of interest or intangible income received or accrued
6.23 by a foreign operating corporation with respect to such item of income to the extent that
6.24 the income is income from sources without the United States as defined in subtitle A,
6.25 chapter 1, subchapter N, part 1, of the Internal Revenue Code;

6.26 (22) the dividends attributable to the income of a foreign operating corporation that
6.27 is a member of the taxpayer's unitary group in an amount that is equal to the dividends
6.28 paid deduction of a real estate investment trust under section 561(a) of the Internal
6.29 Revenue Code for amounts paid or accrued by the real estate investment trust to the
6.30 foreign operating corporation;

6.31 (23) the income of a foreign operating corporation that is a member of the taxpayer's
6.32 unitary group in an amount that is equal to gains derived from the sale of real or personal
6.33 property located in the United States;

7.1 (24) the additional amount allowed as a deduction for donation of computer
 7.2 technology and equipment under section 170(e)(6) of the Internal Revenue Code, to the
 7.3 extent deducted from taxable income; ~~and~~

7.4 (25) discharge of indebtedness income resulting from reacquisition of business
 7.5 indebtedness and deferred under section 108(i) of the Internal Revenue Code; and

7.6 (26) the amount of the deduction under section 170 of the Internal Revenue Code
 7.7 that represents contributions to a qualified foundation for which a credit is received under
 7.8 section 290.0693.

7.9 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 7.10 December 31, 2010.

7.11 Sec. 3. **[290.0693] EQUITY AND OPPORTUNITY IN EDUCATION TAX**
 7.12 **CREDIT.**

7.13 Subdivision 1. Definitions. (a) For purposes of this section, the following terms
 7.14 have the meanings given.

7.15 (b) "Eligible student" means a student who:

7.16 (1) resides in Minnesota;

7.17 (2) is a member of a household whose total annual income during the year prior
 7.18 to initial receipt of a qualified grant, without consideration of the benefits under this
 7.19 program, does not exceed an amount equal to 1.5 times the income standard used to
 7.20 qualify for a reduced-price meal under the National School Lunch Program, as specified in
 7.21 United States Code, title 42, section 1758; and

7.22 (3) either:

7.23 (i) attended a public, nonpublic, or charter school in the semester preceding initial
 7.24 receipt of a qualified grant;

7.25 (ii) is starting school in Minnesota for the first time; or

7.26 (iii) previously received a qualified grant under this section.

7.27 (c) "Equity and opportunity in education donation" means a donation to a qualified
 7.28 foundation that makes qualified grants.

7.29 (d) "Qualified school" means a school operated in Minnesota that is either:

7.30 (1) a nonpublic elementary or secondary school in Minnesota wherein a resident
 7.31 may legally fulfill the state's compulsory attendance laws, that is not operated for profit,
 7.32 and that adheres to the provisions of United States Code, title 42, section 1981;

7.33 (2) a charter elementary or secondary school in Minnesota that has at least 30
 7.34 percent of its students who qualify for a reduced-price meal under the National School
 7.35 Lunch Program; or

8.1 (3) public or nonpublic preschool evaluated to be of high quality and serving
8.2 children ages 3 to 5.

8.3 (e) "Qualified foundation" means a nonprofit organization granted an exemption
8.4 from the federal income tax described in section 501(c)(3) of the Internal Revenue Code
8.5 that complies with the requirements of the equity and opportunity in education tax credit.
8.6 Two or more qualified schools can form a qualified foundation.

8.7 (f) "Qualified grant" means a grant from a qualified foundation for:

8.8 (1) qualified scholarships to a qualified student for tuition to attend a qualified
8.9 school; or

8.10 (2) a qualified charter school for use in support of the school's mission of educating
8.11 eligible students in academics, arts, or athletics, including transportation.

8.12 (g) "Qualified scholarship" means a payment to or on behalf of the parent or guardian
8.13 of a qualified student for payment of tuition at a qualified school. A qualified scholarship
8.14 must not exceed an amount greater than 70 percent of the state average general education
8.15 revenue under section 126C.10, subdivision 1, per pupil unit.

8.16 Subd. 2. **Credit allowed.** (a) An individual or corporate taxpayer is allowed a
8.17 credit against the tax due under this chapter equal to 80 percent of the amount donated
8.18 to a qualified foundation during the taxable year. No credit is allowed if the taxpayer
8.19 designates a specific child as the beneficiary of the contribution.

8.20 (b) The maximum annual credit allowed is:

8.21 (1) \$20,000 for married joint filers;

8.22 (2) \$10,000 for other individual filers; and

8.23 (3) \$100,000 for corporate filers.

8.24 (c) A taxpayer must provide a copy of the receipt provided by the qualified
8.25 foundation when claiming the credit for the donation.

8.26 (d) The credit is limited to the liability for tax under this chapter, including the tax
8.27 imposed by sections 290.0921 and 290.0922.

8.28 (e) If the amount of the credit under this subdivision for any taxable year exceeds
8.29 the limitations under paragraph (d), the excess is a credit carryover to each of the five
8.30 succeeding taxable years. The entire amount of the excess unused credit for the taxable
8.31 year must be carried first to the earliest of the taxable years to which the credit may be
8.32 carried. The amount of the unused credit that may be added under this paragraph may
8.33 not exceed the taxpayer's liability for tax, less the credit for the taxable year. No credit
8.34 may be carried to a taxable year more than five years after the taxable year in which the
8.35 credit was earned.

9.1 Subd. 3. **Application for credit certificate.** (a) A taxpayer must apply to the
9.2 commissioner for an equity and opportunity in education tax credit certificate.

9.3 (b) The commissioner must not issue a tax credit certificate for an amount greater
9.4 than the limits under subdivision 2.

9.5 Subd. 4. **Responsibilities of qualified foundations.** (a) Each qualified foundation
9.6 that receives donations directly from taxpayers under this section must:

9.7 (1) notify the commissioner of its intent to participate in this program and, for
9.8 purposes of determining the maximums under subdivision 3, the type of qualified schools
9.9 who receive grants or the type of qualified schools attended by qualified students who
9.10 receive qualified scholarships from that foundation;

9.11 (2) demonstrate to the commissioner that it has been granted an exemption from
9.12 the federal income tax as an organization described in section 501(c)(3) of the Internal
9.13 Revenue Code;

9.14 (3) provide a receipt or verification on a form approved by the commissioner to
9.15 taxpayers for donations and commitments made to qualified foundations;

9.16 (4) conduct criminal background checks on all of its employees and board members
9.17 and exclude from employment or governance any individuals that might reasonably pose a
9.18 risk to the appropriate use of contributed funds;

9.19 (5) demonstrate its financial accountability by:

9.20 (i) submitting a financial information report for the organization that complies with
9.21 uniform financial accounting standards established by the commissioner and conducted by
9.22 a certified public accountant; and

9.23 (ii) having the auditor certify that the report is free of material misstatements;

9.24 (6) demonstrate its financial viability, if they are to receive donations of \$50,000 or
9.25 more during the school year, by filing financial information with the commissioner prior
9.26 to September 1 of each year that demonstrates the financial viability of the qualified
9.27 foundation;

9.28 (7) consistent with paragraph (c), use amounts received as donations to provide
9.29 qualified scholarships or make qualified grants within one calendar year from the
9.30 September 1 following the date of receiving the donation; and

9.31 (8) ensure that a qualified school that receives qualified grants or enrolls eligible
9.32 students:

9.33 (i) complies with all health and safety laws or codes that apply to nonpublic schools;

9.34 (ii) holds a valid occupancy permit if required by its municipality;

9.35 (iii) certifies that it adheres to the provisions of United States Code, title 42, section
9.36 1981; and

10.1 (iv) provides academic accountability to parents of students in the program by
10.2 regularly reporting to the parents on the student's progress.

10.3 (b) A qualified foundation that receives donations directly from taxpayers under this
10.4 program must report to the commissioner by June 1 of each year the following information
10.5 prepared by a certified public accountant regarding its grants in the previous calendar year:

10.6 (1) the total number and total dollar amount of donations from taxpayers received
10.7 during the previous calendar year; and

10.8 (2) the total number and total dollar amount of qualified scholarships or qualified
10.9 grants awarded during the previous calendar year.

10.10 (c) The foundation may use up to seven percent of the amounts received as donations
10.11 for reasonable administrative expenses, including but not limited to fundraising,
10.12 scholarship tracking, and reporting requirements.

10.13 (d) If the commissioner decides to bar a qualified foundation from the program for
10.14 failure to comply with the requirements in paragraph (a), clauses (1) to (8), the qualified
10.15 foundation must notify taxpayers who have donated to the qualified foundation in writing
10.16 within 30 days.

10.17 Subd. 5. Responsibilities of commissioner. (a) The commissioner must prescribe a
10.18 standardized format for a receipt to be issued by a qualified foundation to a taxpayer to
10.19 indicate the value of a donation received.

10.20 (b) The commissioner must prescribe a standardized format for qualified foundations
10.21 to report the information required under subdivision 4.

10.22 (c) The commissioner must post on the department's Web site the names and
10.23 addresses of qualified foundations and regularly update the names and addresses of any
10.24 qualified foundations that have been barred from participating in the program.

10.25 (d) The commissioner may conduct either a financial review or audit of a qualified
10.26 foundation upon finding evidence of fraud or intentional misreporting.

10.27 (e) The commissioner may bar a qualified foundation from participating in the
10.28 program if the commissioner establishes that the qualified foundation has intentionally and
10.29 substantially failed to comply with the requirements in subdivision 4. If the commissioner
10.30 determines that a qualified foundation should be barred from the program, the
10.31 commissioner must notify the qualified foundation within 60 days of that determination.

10.32 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
10.33 December 31, 2010.