

A bill for an act

relating to taxation; income; franchise; conforming to certain changes in the Internal Revenue Code; repealing requirement that commissioner of revenue delay corporate refunds; amending Minnesota Statutes 2010, sections 289A.02, subdivision 7; 290.01, subdivisions 19, 19a, 19c, 31; 290A.03, subdivision 15; repealing Laws 2010, First Special Session chapter 1, article 13, section 6.

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

Section 1. Minnesota Statutes 2010, section 289A.02, subdivision 7, is amended to read:

Subd. 7. **Internal Revenue Code.** Unless specifically defined otherwise, for taxable years beginning before January 1, 2010, and after December 31, 2010, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through March 18, 2010; and for taxable years beginning after December 31, 2009, and before January 1, 2011, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 2010.

EFFECTIVE DATE. This section is effective the day following final enactment.

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

Subd. 19. **Net income.** The term "net income" means the federal taxable income, as defined in section 63 of the Internal Revenue Code of 1986, as amended through the date named in this subdivision, incorporating the federal effective dates of changes to the Internal Revenue Code and any elections made by the taxpayer in accordance with the Internal Revenue Code in determining federal taxable income for federal income tax purposes, and with the modifications provided in subdivisions 19a to 19f.

In the case of a regulated investment company or a fund thereof, as defined in section 851(a) or 851(g) of the Internal Revenue Code, federal taxable income means investment company taxable income as defined in section 852(b)(2) of the Internal Revenue Code, except that:

(1) the exclusion of net capital gain provided in section 852(b)(2)(A) of the Internal Revenue Code does not apply;

(2) the deduction for dividends paid under section 852(b)(2)(D) of the Internal Revenue Code must be applied by allowing a deduction for capital gain dividends and exempt-interest dividends as defined in sections 852(b)(3)(C) and 852(b)(5) of the Internal Revenue Code; and

(3) the deduction for dividends paid must also be applied in the amount of any undistributed capital gains which the regulated investment company elects to have treated as provided in section 852(b)(3)(D) of the Internal Revenue Code.

The net income of a real estate investment trust as defined and limited by section 856(a), (b), and (c) of the Internal Revenue Code means the real estate investment trust taxable income as defined in section 857(b)(2) of the Internal Revenue Code.

The net income of a designated settlement fund as defined in section 468B(d) of the Internal Revenue Code means the gross income as defined in section 468B(b) of the Internal Revenue Code.

The Internal Revenue Code of 1986, as amended through March 18, 2010, shall be in effect for taxable years beginning after December 31, 1996, except that for taxable years beginning after December 31, 2009, and before January 1, 2011, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through December 31, 2010. The provisions of the act of January 22, 2010, Public Law 111-126, to accelerate the benefits for charitable cash contributions for the relief of victims of the Haitian earthquake, are effective at the same time it became effective for federal purposes and apply to the subtraction under subdivision 19b, clause (6). The provisions of title II, section 2112, of the act of September 27, 2010, Public Law 111-240, rollovers from elective deferral plans to designated Roth accounts, are effective at the same time they became effective for federal purposes and taxable rollovers are included in net income at the same time they are included in gross income for federal purposes.

Except as otherwise provided, references to the Internal Revenue Code in subdivisions 19 to 19f mean the code in effect for purposes of determining net income for the applicable year.

EFFECTIVE DATE. This section is effective the day following final enactment, except that the changes incorporated by federal changes are effective at the same time as the changes were effective for federal purposes.

Sec. 3. Minnesota Statutes 2010, section 290.01, subdivision 19a, is amended to read:

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

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

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

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

(B) the portion of the exempt-interest dividends derived from interest income on obligations of the state of Minnesota or its political or governmental subdivisions, municipalities, governmental agencies or instrumentalities, but only if the portion of the exempt-interest dividends from such Minnesota sources paid to all shareholders represents 95 percent or more of the exempt-interest dividends, including any dividends exempt under subitem (A), that are paid by the regulated investment company as defined in section 851(a) of the Internal Revenue Code, or the fund of the regulated investment company as defined in section 851(g) of the Internal Revenue Code, making the payment; and

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

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

Revenue Code of 1986, income, sales and use, motor vehicle sales, or excise taxes are the last itemized deductions disallowed;

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

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

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

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

(7) 80 percent of the depreciation deduction allowed under section 168(k) of the Internal Revenue Code. For purposes of this clause, if the taxpayer has an activity that in the taxable year generates a deduction for depreciation under section 168(k) and the activity generates a loss for the taxable year that the taxpayer is not allowed to claim for the taxable year, "the depreciation allowed under section 168(k)" for the taxable year is limited to excess of the depreciation claimed by the activity under section 168(k) over the amount of the loss from the activity that is not allowed in the taxable year. In succeeding taxable years when the losses not allowed in the taxable year are allowed, the depreciation under section 168(k) is allowed;

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

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

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

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

(12) for taxable years beginning before January 1, 2010, and after December 31, 2010, the amount deducted for qualified tuition and related expenses under section 222 of the Internal Revenue Code, to the extent deducted from gross income;

(13) for taxable years beginning before January 1, 2010, and after December 31, 2010, the amount deducted for certain expenses of elementary and secondary school teachers under section 62(a)(2)(D) of the Internal Revenue Code, to the extent deducted from gross income;

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

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

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

(17) the amount of unemployment compensation exempt from tax under section 85(c) of the Internal Revenue Code.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2009.

Sec. 4. Minnesota Statutes 2010, section 290.01, subdivision 19c, is amended to read:

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

(1) the amount of any deduction taken for federal income tax purposes for income, excise, or franchise taxes based on net income or related minimum taxes, including but not limited to the tax imposed under section 290.0922, paid by the corporation to Minnesota, another state, a political subdivision of another state, the District of Columbia, or any foreign country or possession of the United States;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) licensing fees; and

(v) other similar expenses and costs.

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

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

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

(i) income related to the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property;

(ii) income from factoring transactions or discounting transactions;

- 8.1 (iii) royalty, patent, technical, and copyright fees;
8.2 (iv) licensing fees; and
8.3 (v) other similar income.

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

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

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

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

8.19 (24) for taxable years beginning before January 1, 2010, and after December 31,
8.20 2010, the additional amount allowed as a deduction for donation of computer technology
8.21 and equipment under section 170(e)(6) of the Internal Revenue Code, to the extent
8.22 deducted from taxable income; and

8.23 (25) discharge of indebtedness income resulting from reacquisition of business
8.24 indebtedness and deferred under section 108(i) of the Internal Revenue Code.

8.25 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
8.26 December 31, 2009.

8.27 Sec. 5. Minnesota Statutes 2010, section 290.01, subdivision 31, is amended to read:

8.28 Subd. 31. **Internal Revenue Code.** Unless specifically defined otherwise, for
8.29 taxable years beginning before January 1, 2010, and after December 31, 2010, "Internal
8.30 Revenue Code" means the Internal Revenue Code of 1986, as amended through March 18,
8.31 2010; and for taxable years beginning after December 31, 2009, and before January 1,
8.32 2011, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended
8.33 through December 31, 2010. Internal Revenue Code also includes any uncoded

9.1 provision in federal law that relates to provisions of the Internal Revenue Code that are
9.2 incorporated into Minnesota law.

9.3 **EFFECTIVE DATE.** This section is effective the day following final enactment,
9.4 except the changes incorporated by federal changes are effective at the same time as the
9.5 changes were effective for federal purposes.

9.6 Sec. 6. Minnesota Statutes 2010, section 290A.03, subdivision 15, is amended to read:

9.7 Subd. 15. **Internal Revenue Code.** For taxable years beginning before January 1,
9.8 2010, and after December 31, 2010, "Internal Revenue Code" means the Internal Revenue
9.9 Code of 1986, as amended through March 18, 2010; and for taxable years beginning after
9.10 December 31, 2009, and before January 1, 2011, "Internal Revenue Code" means the
9.11 Internal Revenue Code of 1986, as amended through December 31, 2010.

9.12 **EFFECTIVE DATE.** This section is effective for property tax refunds based on
9.13 property taxes payable on or after December 31, 2010, and rent paid on or after December
9.14 31, 2009.

9.15 Sec. 7. **CORRECTED FORM W-2 NOT REQUIRED.**

9.16 Employers who have prepared and distributed form W-2, wage and tax statement,
9.17 for tax year 2010, that reported to employees the amount of health coverage provided to
9.18 adult children under age 27 includable in net income under prior law, are not required to
9.19 prepare and distribute corrected tax year 2010 form W-2.

9.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.21 Sec. 8. **REPEALER.**

9.22 Laws 2010, First Special Session chapter 1, article 13, section 6, is repealed.

9.23 **EFFECTIVE DATE.** This section is effective the day following final enactment.

APPENDIX
Repealed Minnesota Session Laws: H0079-3

Laws 2010, First Special Session chapter 1, article 13, section 6

Sec. 6. PAYMENT OF REFUNDS.

(a) In paying refunds during fiscal year 2011 of overpayments of corporate franchise tax and of sales tax, including but not limited to capital equipment refunds, the commissioner of revenue shall delay paying a sufficient number of these refunds until fiscal year 2012 so that \$152,000,000 less in refunds is paid in fiscal year 2011 than otherwise would have been paid. This amount is in addition to any amount that the commissioner delays pursuant to administrative actions undertaken in connection with the unallotment announced in June 2009. Refunds delayed by the commissioner under this section are deemed to be due on July 1, 2011, for budget purposes, if the law otherwise would provide an earlier date. Any refunds paid after June 30, 2011, and before the close of fiscal year 2011 are deemed to be paid in fiscal year 2012 for budget purposes.

(b) In carrying out the requirement of paragraph (a), the commissioner shall, to the extent possible, minimize delaying the payment of refunds that would result in payment of additional interest by the state. The commissioner may select refunds for delayed payment under this section or exempt refunds from this section in the manner that the commissioner determines, in the commissioner's sole discretion, has the least adverse effect on tax administration and taxpayer compliance.