

A bill for an act

relating to unemployment insurance and taxation; providing penalties; modifying additions to taxable income; amending Minnesota Statutes 2010, sections 268.184, subdivisions 1, 2; 290.01, subdivisions 19a, 19c.

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

Section 1. Minnesota Statutes 2010, section 268.184, subdivision 1, is amended to read:

Subdivision 1. **Administrative penalties.** (a) The commissioner must penalize an employer if that employer or any employee, officer, or agent of that employer, is in collusion with any applicant for the purpose of assisting the applicant to receive unemployment benefits fraudulently. The penalty is \$500 or the amount of unemployment benefits determined to be overpaid, whichever is greater.

(b) The commissioner must penalize an employer if that employer or any employee, officer, or agent of that employer (1) made a false statement or representation knowing it to be false, (2) made a false statement or representation without a good faith belief as to correctness of the statement or representation, (3) knowingly failed to disclose a material fact, or (4) made an offer of employment to an applicant when, in fact, the employer had no employment available, but only if the employer's action:

(i) was taken to prevent or reduce the payment of unemployment benefits to any applicant;

(ii) was taken to reduce or avoid any payment required from an employer under this chapter or section 116L.20; or

(iii) caused an overpayment of unemployment benefits to an applicant.

The penalty is \$500, or 50 percent of the overpaid or reduced unemployment benefits or payment required, whichever is greater.

(c) The commissioner must penalize an employer if that employer or any employee, officer, or agent of that employer raises an issue of ineligibility or files an appeal of the determination or amended determination of benefit account without a good faith belief that the employee is ineligible for benefits. The penalty is \$1,000 or the amount of unemployment benefits or payment required, whichever is greater.

~~(c)~~ (d) The commissioner must penalize an employer if that employer failed or refused to honor a subpoena issued under section 268.105, subdivision 4, or section 268.188. The penalty is \$500 and any costs of enforcing the subpoena, including attorney fees.

~~(d)~~ (e) Penalties under this subdivision are in addition to any other penalties and subject to the same collection procedures that apply to past due taxes. Penalties must be paid within 30 calendar days of assessment and credited to the contingent account.

~~(e)~~ (f) The assessment of the penalty is final unless the employer files an appeal within 20 calendar days after the sending of notice of the penalty to the employer by mail or electronic transmission. Proceedings on the appeal are conducted in accordance with section 268.105.

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

Sec. 2. Minnesota Statutes 2010, section 268.184, subdivision 2, is amended to read:

Subd. 2. **Criminal penalties.** Any employer or any officer or agent of an employer or any other individual who:

(1) makes a false statement or representation knowing it to be false;

(2) knowingly fails to disclose a material fact, including notification required under section 268.051, subdivision 4; ~~or~~

(3) raises an issue of ineligibility or files an appeal of the determination or amended determination of benefit account without a good faith belief that the employee is ineligible for benefits; or

~~(3)~~ (4) knowingly advises or assists an employer in violating clause (1) ~~or~~ (2), or (3), to avoid or reduce any payment required from an employer under this chapter or section 116L.20, or to prevent or reduce the payment of unemployment benefits to any applicant, is guilty of a gross misdemeanor unless the underpayment exceeds \$500, in that case the individual is guilty of a felony.

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

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) 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) 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; and

(18) to the extent deducted in computing federal taxable income, any amounts paid or incurred during the taxable year for the cost of raising the ineligibility or contesting or appealing the eligibility of a former employee of the taxpayer for unemployment benefits, including, but not limited to, any amounts for attorney fees and compensation of employees appropriately allocated to their time spent on the matter, filing fees, witness fees, research, copying, and similar costs paid or incurred on the matter.

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

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;

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

(iv) licensing fees; and

(v) other similar income.

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 income received or accrued by a foreign operating corporation with respect to such item of income to the extent that the income is income from sources without the United States as defined in subtitle A, chapter 1, subchapter N, part 1, of the Internal Revenue Code;

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

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

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

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

(26) to the extent deducted in computing federal taxable income, any amounts paid or incurred during the taxable year for the cost of raising the ineligibility or contesting or appealing the eligibility of a former employee of the taxpayer for unemployment benefits, including, but not limited to, any amounts for attorney fees and compensation of employees appropriately allocated to their time spent on the matter, filing fees, witness fees, research, copying, and similar costs paid or incurred on the matter.

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