A bill for an act

relating to taxation; income; amending participation fee and program fee requirements; allowing a credit for contributions to prekindergarten scholarship granting organizations; amending Minnesota Statutes 2008, sections 124D.13, subdivision 6; 124D.15, subdivision 12; 290.01, subdivision 19c; proposing coding for new law in Minnesota Statutes, chapter 290.

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

Section 1. Minnesota Statutes 2008, section 124D.13, subdivision 6, is amended to read:

Subd. 6. **Participants' fees.** A district must establish a reasonable sliding fee scale, and must accept education scholarships funded by contributions that qualify for the tax credit in section 290.0678, but it shall waive the fee for a participant who does not have a scholarship and is unable to pay.

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

Sec. 2. Minnesota Statutes 2008, section 124D.15, subdivision 12, is amended to read:

Subd. 12. **Program fees.** A district must adopt a sliding fee schedule based on a family's income, and must accept education scholarships funded by contributions that qualify for the tax credit in section 290.0678, but must waive a fee for a participant who does not have a scholarship and is unable to pay.

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

Sec. 3. Minnesota Statutes 2008, 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 section 103 of Public Law 109-222;

(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; ~~and~~

(24) for taxable years beginning after December 31, 2006, and before January 1, 2008, 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) the amount deducted under section 170 of the Internal Revenue Code that represents contributions to a prekindergarten scholarship granting organization for which a credit is claimed under section 290.0678.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2008.

Sec. 4. **[290.0678] CREDIT FOR CONTRIBUTIONS TO SCHOLARSHIP GRANTING ORGANIZATIONS.**

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

(b) "Statewide median family income" means median income for a four-person family in Minnesota used by the United States Department of Health and Human Services in administering the Low Income Home Energy Assistance Program, as most recently published in the Federal Register.

(c) A "qualified student" must be:

(1) younger than age seven, not yet enrolled in kindergarten or first grade, and a Minnesota resident; and

(2) a member of a household with an income less than 75 percent of the statewide median family income.

(d) A "qualified prekindergarten educational program" must:

(1) be one of the following:

(i) a prekindergarten program established by a school district under chapter 124D;

(ii) a preschool, nursery school, or early childhood development program licensed by the Department of Human Services and accredited by the National Association for the Education of Young Children or National Early Childhood Program Accreditation;

(iii) a Montessori program affiliated with or accredited by the American Montessori Society or American Montessori International;

(iv) an early childhood family education program under section 124D.13; or

(v) a school readiness program under section 124D.15; and

(2) accept education scholarship funds granted under this section in payment of tuition for a qualified student under paragraph (c) enrolled in the program.

(e) "Prekindergarten scholarship granting organization" or "preK SGO" means a charitable organization that is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code, is registered with the attorney general's office, and is certified by the commissioner of education as meeting the criteria of this paragraph. To qualify as a preK SGO, the charitable organization:

(1) must allocate at least 85 percent of its annual revenue for education scholarship funds to children to allow them to attend any qualified prekindergarten educational program of their parents' choice;

(2) must not restrict the availability of scholarships to students of one program;

(3) may not charge a fee of any kind to students under consideration for a scholarship;

(4) must require a qualified prekindergarten educational program receiving payment of tuition through a scholarship grant funded by contributions qualifying for the tax credit under subdivision 3 awarded by a preK SGO to an enrolled student of the program to sign an agreement that it will not use different admissions standards for a student with a scholarship grant from a preK SGO;

(5) must agree to annually report to the Department of Education on:

(i) the number of students awarded scholarship grants funded by contributions under the tax credit program;

(ii) the total amount of scholarship grant dollars awarded from contributions under the tax credit program;

(iii) the total number of programs attended by scholarship grant recipients;

(iv) the total amount of contributions received under the tax credit program; and

(v) the percentage of contributions received under the tax credit program that was provided as scholarship grants to families; and

(6) must provide the Department of Education with the same annual report that the organization must provide the attorney general's office under section 309.53, subdivision 1.

Subd. 2. **Commissioner of education.** The commissioner of education:

(1) must maintain a list of preK SGO's;

(2) must make the list available on the Department of Education's Web site and by other means;

(3) must develop an application process for preK SGO's to be recorded as qualifying by the Department of Education under this section;

(4) may remove an organization from the list of qualifying preK SGO's, after notifying the organization and providing an opportunity for a public hearing, for reasons of the organization's financial mismanagement or violation of the law; and

(5) must develop a process for preK SGO's to annually report to the Department of Education as specified in this section.

Subd. 3. **Credit allowed.** A corporation is allowed a credit against the corporate franchise tax due under this chapter equal to 50 percent of the amount contributed to a prekindergarten scholarship granting organization. The maximum credit allowed any corporation in a taxable year is $100,000. The credit may not be claimed for contributions designated for the use of a specific student. The credit for the taxable year may not exceed the corporation's liability for tax. The commissioner of revenue shall prescribe the manner in which the credit may be claimed. This may include allowing the credit only as a separately processed claim for refund.

Subd. 4. **Application for credit certificate.** A corporation shall apply to the Department of Education for a tax credit certificate. A corporation shall receive a tax credit certificate under this section if the preK SGO appears on the list of qualifying preK SGO's maintained by the Department of Education. Tax credit certificates under this section shall be made available by the Department of Education on a first-come, first-served basis until the maximum statewide credit amount has been reached. The statewide credit maximum amount is $....... in fiscal year 2010 and $....... in fiscal year 2011. A contribution by a corporation to a preK SGO shall be made no later than 60 days following written notification of the approval of an application. The commissioner of education shall issue the tax credit certificate in the amount of one-half of the amount contributed to the preK SGO after the corporation has made the contribution to the preK SGO. The commissioner of education shall not issue a tax credit certificate for an amount greater than $100,000.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2008.