State of Minnesota
HOUSE OF REPRESENTATIVES
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H. F. No. 1368

03/02/2015 Authored by Kresha, Loonan, O'Driscoll, Loon, Erickson and others
The bill was read for the first time and referred to the Committee on Education Innovation Policy
03/16/2015 Adoption of Report: Re-referred to the Committee on Education Finance

A bill for an act

relating to taxation; income; prekindergarten educational programs; providing a tax credit for contributions to qualified foundations; amending Minnesota Statutes 2014, section 290.01, subdivisions 19a, 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 2014, 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 state itemized deduction exceeds the amount of the standard deduction as defined in section 63(c) of the Internal Revenue Code, minus any addition that would have been required under clause (17) if the taxpayer had claimed the standard deduction. For the purpose of this clause, income, sales and use, motor vehicle sales, or excise taxes are the last itemized deductions disallowed under clause (15);

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

(11) for taxable years beginning before January 1, 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;

(12) for taxable years beginning before January 1, 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;

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

(14) changes to federal taxable income attributable to a net operating loss that the taxpayer elected to carry back for more than two years for federal purposes but for which the losses can be carried back for only two years under section 290.095, subdivision 11, paragraph (c);

(15) the amount of disallowed itemized deductions, but the amount of disallowed itemized deductions plus the addition required under clause (2) 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, and reduced by any addition that would have been required under clause (17) if the taxpayer had claimed the standard deduction:

(i) the amount of disallowed itemized deductions is equal to the lesser of:

(A) three percent of the excess of the taxpayer's federal adjusted gross income over the applicable amount; or

(B) 80 percent of the amount of the itemized deductions otherwise allowable to the taxpayer under the Internal Revenue Code for the taxable year;

(ii) the term "applicable amount" means $100,000, or $50,000 in the case of a married individual filing a separate return. Each dollar amount shall be increased by an amount equal to:

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code for the calendar year in which the taxable year begins, by substituting "calendar year 1990" for "calendar year 1992" in subparagraph (B) thereof;

(iii) the term "itemized deductions" does not include:

(A) the deduction for medical expenses under section 213 of the Internal Revenue Code;

(B) any deduction for investment interest as defined in section 163(d) of the Internal Revenue Code; and

(C) the deduction under section 165(a) of the Internal Revenue Code for casualty or theft losses described in paragraph (2) or (3) of section 165(c) of the Internal Revenue Code or for losses described in section 165(d) of the Internal Revenue Code;

(16) the amount of disallowed personal exemptions for taxpayers with federal adjusted gross income over the threshold amount:

(i) the disallowed personal exemption amount is equal to the number of personal exemptions allowed under section 151(b) and (c) of the Internal Revenue Code multiplied by the dollar amount for personal exemptions under section 151(d)(1) and (2) of the Internal Revenue Code, as adjusted for inflation by section 151(d)(4) of the Internal Revenue Code, and by the applicable percentage;

(ii) "applicable percentage" means two percentage points for each $2,500 (or fraction thereof) by which the taxpayer's federal adjusted gross income for the taxable year exceeds the threshold amount. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting "$1,250" for "$2,500." In no event shall the applicable percentage exceed 100 percent;

(iii) the term "threshold amount" means:

(A) $150,000 in the case of a joint return or a surviving spouse;

(B) $125,000 in the case of a head of a household;

(C) $100,000 in the case of an individual who is not married and who is not a surviving spouse or head of a household; and

(D) $75,000 in the case of a married individual filing a separate return; and

(iv) the thresholds shall be increased by an amount equal to:

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code for the calendar year in which the taxable year begins, by substituting "calendar year 1990" for "calendar year 1992" in subparagraph (B) thereof; and

(17) to the extent deducted in the computation of federal taxable income, for taxable years beginning after December 31, 2010, and before January 1, 2014, the difference between the standard deduction allowed under section 63(c) of the Internal Revenue Code and the standard deduction allowed for 2011, 2012, and 2013 under the Internal Revenue Code as amended through December 1, 2010~~.~~; and

(18) the amount of the deduction under section 170 of the Internal Revenue Code that represents contributions to a qualified foundation under section 290.0678.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2014.

Sec. 2. Minnesota Statutes 2014, 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 amount of percentage depletion deducted under sections 611 through 614 and 291 of the Internal Revenue Code;

(9) 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;

(10) 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;

(11) 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;

(12) 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;

(13) 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;

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

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

(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 the deduction under section 170 of the Internal Revenue Code that represents contributions to a qualified foundation under section 290.0678.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2014.

Sec. 3. **[290.0678] EQUITY AND OPPORTUNITY IN EARLY EDUCATION TAX CREDIT.**

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

(b) "Eligible child" means a child who:

(1) is a member of a family that meets the income eligibility requirements for early learning scholarships in section 124D.165, subdivision 2, paragraph (a), clause (2). Once

a child is eligible under this program, the child remains eligible regardless of changes in household income until the child enters elementary school or reaches seven years of age, whichever occurs first; and

(2) resides in Minnesota.

(c) "Equity and opportunity in early education donation" means a donation to a qualified foundation that awards qualified scholarships.

(d) "Nonmetropolitan counties" means all Minnesota counties not included in the seven-county metropolitan area.

(e) "Qualified foundation" means a nonprofit organization granted an exemption from the federal income tax under section 501(c)(3) of the Internal Revenue Code that complies with the requirements of the equity and opportunity in education tax credit. A qualified school that meets the requirements of this paragraph is a qualified foundation program under this section.

(f) "Qualified prekindergarten educational program" means a program that participates in a quality rating system and is one of the following:

(1) a prekindergarten program established by a school district or a charter school under chapter 124D;

(2) 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;

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

(4) a child care program provided by a family day care provider holding a current early childhood development credential approved by the commissioner of human services.

(g) "Qualified scholarship" means a payment from a qualified foundation to or on behalf of the parent or guardian of a qualified child for payment of the cost of participation in a qualified prekindergarten educational program.

(h) "Seven-county metropolitan area" means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties.

Subd. 2. **Credit allowed; limitation; carryover.** (a) An individual or corporate taxpayer is allowed a credit against the tax due under this chapter equal to 80 percent of the amount donated to a qualified foundation during the taxable year.

(b) The maximum annual credit allowed is:

(1) $20,000 for married joint filers for a one-year donation of $25,000;

(2) $10,000 for other individual filers for a one-year donation of $12,500; and

(3) $100,000 for corporate filers for a one-year donation of $125,000.

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

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

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

Subd. 3. **Application for credit certificate.** (a) A taxpayer must apply to the commissioner for an equity and opportunity in education tax credit certificate. Tax credit certificates under this section must be made available on a first-come, first-served basis until the maximum statewide credit amount has been reached. The maximum statewide credit amounts are:

(1) $10,000,000 per taxable year for contributions for use by qualified foundations to provide qualified scholarships in the seven-county metropolitan area; and

(2) $10,000,000 per taxable year for contributions for use by qualified foundations to provide scholarships in nonmetropolitan counties.

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

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

(1) notify the commissioner of the qualified foundation's intent to participate in this program;

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

(3) provide a receipt or verification on a form prescribed by the commissioner to taxpayers for donations and commitments made to the qualified foundation;

(4) conduct criminal background checks on all of the qualified foundation's employees and board members and exclude from employment or governance any individuals who might reasonably pose a risk to the appropriate use of contributed funds;

(5) demonstrate the qualified foundation's financial accountability by:

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

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

(6) demonstrate the qualified foundation's financial viability, if it receives donations of $150,000 or more during the school year, by filing financial information with the commissioner prior to September 1 of each year that demonstrates the financial viability of the qualified foundation;

(7) use any amount received as a donation to make qualified scholarships within two years of the date of receiving the donation; and

(8) ensure that qualified prekindergarten educational facilities that receive qualified scholarships or enroll eligible children:

(i) comply with all health and safety laws or codes;

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

(iii) certify that the qualified prekindergarten educational facility does not discriminate in admissions on the basis of race, color, national origin, religion, or disability; and

(iv) provide accountability to parents of children in the program by regularly reporting to the parents on the child's progress.

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2014.

Sec. 4. **EVALUATION OF EQUITY AND OPPORTUNITY IN EDUCATION TAX CREDIT PROGRAM.**

(a) No later than December 31, 2017, the commissioner of revenue, after consultation with the commissioner of education, shall contract with a qualified outside entity or individual to evaluate the effects of the equity and opportunity in education tax credit. The program evaluation must be completed by January 2019 and provided to the chairs and ranking minority members of the legislative committees having jurisdiction over taxes and prekindergarten education in the senate and the house of representatives in compliance with sections 3.195 and 3.197. The program evaluation must include, in addition to any other matters the commissioner considers relevant to evaluating the effectiveness of the credit, analysis of:

(1) the level of parental and family satisfaction with the program; and

(2) the impact of the program on public and private prekindergarten educational program capacity, availability, and quality.

(b) The researchers who conduct the study must:

(1) apply appropriate analytical and behavioral science methodologies to ensure public confidence in the study; and

(2) protect the identity of participating prekindergarten educational program facilities and children by, among other things, keeping anonymous all disaggregated data other than that for the categories of gender, race, and ethnicity.

(c) The relevant public and participating prekindergarten educational program facilities must cooperate with the research effort by providing any data necessary to complete the study.

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