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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 386

01/23/2017 Authored by Kresha, Daudt, Peppin, Loon, Erickson and others
The bill was read for the first time and referred to the Committee on Education Innovation Policy

1.1 A bill for an act
1.2 relating to taxation; income; providing a credit for donations to fund K-12
1.3 scholarships; extending the K-12 education credit to tuition; amending Minnesota
1.4 Statutes 2016, sections 290.0131, by adding a subdivision; 290.0133, by adding
1.5 a subdivision; 290.0674, subdivision 1, by adding a subdivision; proposing coding
1.6 for new law in Minnesota Statutes, chapter 290.

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

1.8 Section 1. Minnesota Statutes 2016, section 290.0131, is amended by adding a subdivision
1.9 to read:

1.10 Subd. 14. Equity and opportunity donations to qualified foundations. The amount
1.11 of the deduction under section 170 of the Internal Revenue Code that represents contributions
1.12 to a qualified foundation under section 290.0682 is an addition.

1.13 EFFECTIVE DATE. This section is effective for taxable years beginning after December
1.14 31, 2017.

1.15 Sec. 2. Minnesota Statutes 2016, section 290.0133, is amended by adding a subdivision
1.16 to read:

1.17 Subd. 15. Equity and opportunity donations to qualified foundations. The amount
1.18 of the deduction under section 170 of the Internal Revenue Code that represents contributions
1.19 to a qualified foundation under section 290.0682 is an addition.

1.20 EFFECTIVE DATE. This section is effective for taxable years beginning after December
1.21 31, 2017.

2.1 Sec. 3. Minnesota Statutes 2016, section 290.0674, subdivision 1, is amended to read:

2.2 Subdivision 1. **Credit allowed.** An individual is allowed a credit against the tax imposed
2.3 by this chapter in an amount equal to 75 percent of the amount paid for education-related
2.4 expenses for a qualifying child in kindergarten through grade 12. For purposes of this section,
2.5 "education-related expenses" means:

2.6 (1) fees or tuition for instruction by an instructor under section 120A.22, subdivision
2.7 10, clause (1), (2), (3), (4), or (5), or a member of the Minnesota Music Teachers Association,
2.8 and who is not a lineal ancestor or sibling of the dependent for instruction outside the regular
2.9 school day or school year, including tutoring, driver's education offered as part of school
2.10 curriculum, regardless of whether it is taken from a public or private entity or summer
2.11 camps, in grade or age appropriate curricula that supplement curricula and instruction
2.12 available during the regular school year, that assists a dependent to improve knowledge of
2.13 core curriculum areas or to expand knowledge and skills under the required academic
2.14 standards under section 120B.021, subdivision 1, and the elective standard under section
2.15 120B.022, subdivision 1, clause (2), and that do not include the teaching of religious tenets,
2.16 doctrines, or worship, the purpose of which is to instill such tenets, doctrines, or worship;

2.17 (2) expenses for textbooks, including books and other instructional materials and
2.18 equipment purchased or leased for use in elementary and secondary schools in teaching
2.19 only those subjects legally and commonly taught in public elementary and secondary schools
2.20 in this state. "Textbooks" does not include instructional books and materials used in the
2.21 teaching of religious tenets, doctrines, or worship, the purpose of which is to instill such
2.22 tenets, doctrines, or worship, nor does it include books or materials for extracurricular
2.23 activities including sporting events, musical or dramatic events, speech activities, driver's
2.24 education, or similar programs;

2.25 (3) a maximum expense of \$200 per family for personal computer hardware, excluding
2.26 single purpose processors, and educational software that assists a dependent to improve
2.27 knowledge of core curriculum areas or to expand knowledge and skills under the required
2.28 academic standards under section 120B.021, subdivision 1, and the elective standard under
2.29 section 120B.022, subdivision 1, clause (2), purchased for use in the taxpayer's home and
2.30 not used in a trade or business regardless of whether the computer is required by the
2.31 dependent's school; and

2.32 (4) the amount paid to others for tuition and transportation of a qualifying child attending
2.33 an elementary or secondary school situated in Minnesota, North Dakota, South Dakota,
2.34 Iowa, or Wisconsin, wherein a resident of this state may legally fulfill the state's compulsory

3.1 attendance laws, which is not operated for profit, and which adheres to the provisions of
 3.2 the Civil Rights Act of 1964 and chapter 363A. Amounts under this clause exclude any
 3.3 expense the taxpayer incurred in using the taxpayer's or the qualifying child's vehicle.

3.4 For purposes of this section, "qualifying child" has the meaning given in section 32(c)(3)
 3.5 of the Internal Revenue Code.

3.6 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 3.7 31, 2017.

3.8 Sec. 4. Minnesota Statutes 2016, section 290.0674, is amended by adding a subdivision
 3.9 to read:

3.10 **Subd. 6. Inflation adjustment.** The credit amount and the income threshold at which
 3.11 the maximum credit begins to be reduced in subdivision 2 must be adjusted for inflation.
 3.12 The commissioner shall adjust the credit amount and income threshold by the percentage
 3.13 determined pursuant to the provisions of section 1(f) of the Internal Revenue Code, except
 3.14 that in section 1(f)(3)(B) the word "2014" shall be substituted for the word "1992." For
 3.15 2019, the commissioner shall then determine the percent change from the 12 months ending
 3.16 on August 31, 2017, to the 12 months ending on August 31, 2018, and in each subsequent
 3.17 year, from the 12 months ending August 31, 2017, to the 12 months ending on August 31
 3.18 of the year preceding the taxable year. The credit amount and income threshold as adjusted
 3.19 for inflation must be rounded to the nearest \$10 amount. If the amount ends in \$5, the amount
 3.20 is rounded up to the nearest \$10 amount. The determination of the commissioner under this
 3.21 subdivision is not a rule subject to the Administrative Procedure Act in chapter 14, including
 3.22 section 14.386.

3.23 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 3.24 31, 2018.

3.25 Sec. 5. **[290.0693] EQUITY AND OPPORTUNITY IN EDUCATION TAX CREDIT.**

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

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

3.29 (1) resides in Minnesota;

3.30 (2) is a member of a household that has total annual income during the year prior to
 3.31 initial receipt of a qualified scholarship, without consideration of the benefits under this
 3.32 program, does not exceed an amount equal to two times the income standard used to qualify

4.1 for a reduced-price meal under the National School Lunch Program, as specified in United
4.2 States Code, title 42, section 1758; and

4.3 (3) meets one of the following criteria:

4.4 (i) attended a school, as defined in section 120A.22, subdivision 4, in the semester
4.5 preceding initial receipt of a qualified scholarship;

4.6 (ii) is younger than age seven and not enrolled in kindergarten or first grade in the
4.7 semester preceding initial receipt of a qualified scholarship;

4.8 (iii) previously received a qualified scholarship under this section; or

4.9 (iv) lived in Minnesota for less than a year prior to initial receipt of a qualified
4.10 scholarship.

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

4.13 (d) "Household" means household as used to determine eligibility under the National
4.14 School Lunch Program in United States Code, title 42, section 1758.

4.15 (e) "Qualified school" means a school operated in Minnesota that is a nonpublic
4.16 elementary or secondary school in Minnesota wherein a resident may legally fulfill the
4.17 state's compulsory attendance laws that is not operated for profit, and that adheres to the
4.18 provisions of United States Code, title 42, section 1981, and chapter 363A.

4.19 (f) "Qualified foundation" means a nonprofit organization granted an exemption from
4.20 the federal income tax under section 501(c)(3) of the Internal Revenue Code that has been
4.21 approved as a qualified foundation by the commissioner of revenue under subdivision 5.

4.22 (g) "Qualified scholarship" means a payment from a qualified foundation to or on behalf
4.23 of the parent or guardian of a qualified student for payment of tuition for enrollment in
4.24 grades kindergarten through 12 at a qualified school. A qualified scholarship must not
4.25 exceed an amount greater than 70 percent of the state average general education revenue
4.26 under section 126C.10, subdivision 1, per pupil unit.

4.27 (h) "Total annual income" means the income measure used to determine eligibility under
4.28 the National School Lunch Program in United States Code, title 42, section 1758.

4.29 Subd. 2. Credit allowed. (a) An individual or corporate taxpayer who has been issued
4.30 a credit certificate under subdivision 3 is allowed a credit against the tax due under this
4.31 chapter equal to 70 percent of the amount donated during the taxable year to the qualified
4.32 foundation designated on the taxpayer's credit certificate. No credit is allowed if the taxpayer

5.1 designates a specific child as the beneficiary of the contribution. No credit is allowed to a
5.2 taxpayer for an equity and opportunity in education donation made before the taxpayer was
5.3 issued a credit certificate as provided in subdivision 3.

5.4 (b) The maximum annual credit allowed is:

5.5 (1) \$21,000 for married joint filers for a one-year donation of \$30,000;

5.6 (2) \$10,500 for other individual filers for a one-year donation of \$15,000; and

5.7 (3) \$105,000 for corporate filers for a one-year donation of \$150,000.

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

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

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

5.19 Subd. 3. **Application for credit certificate.** (a) The commissioner must make applications
5.20 for tax credits for 2018 available on the department's Web site by January 1, 2018.

5.21 Applications for subsequent years must be made available by January 1 of the taxable year.

5.22 (b) A taxpayer must apply to the commissioner for an equity and opportunity in education
5.23 tax credit certificate. The application must be in the form and manner specified by the
5.24 commissioner and must designate the qualified foundation to which the taxpayer intends
5.25 to make a donation. The commissioner must begin accepting applications for a taxable year
5.26 on January 1. The commissioner must issue tax credit certificates under this section on a
5.27 first-come, first-served basis until the maximum statewide credit amount has been reached.
5.28 The certificates must list the qualified foundation the taxpayer designated on the application.
5.29 The maximum statewide credit amount is \$35,000,000 per taxable year for taxable years
5.30 beginning after December 31, 2017.

5.31 (c) The commissioner must not issue a tax credit certificate for an amount greater than
5.32 the limits in subdivision 2.

6.1 (d) The commissioner must not issue a credit certificate for an application that designates
6.2 a qualified foundation that the commissioner has barred from participation as provided in
6.3 subdivision 5.

6.4 Subd. 4. Responsibilities of qualified foundations. (a) A qualified foundation must:

6.5 (1) award qualified scholarships to eligible students;

6.6 (2) not restrict the availability of scholarships to students of one qualified school;

6.7 (3) not charge a fee of any kind for a child to be considered for a scholarship; and

6.8 (4) require a qualified school receiving payment of tuition through a scholarship funded
6.9 by contributions qualifying for the tax credit under this section to sign an agreement that it
6.10 will not use different admissions standards for a student with a qualified scholarship.

6.11 (b) An entity that is eligible to be a qualified foundation must apply to the commissioner
6.12 by September 15 of the year preceding the year in which it will first receive equity and
6.13 opportunity in education donations. The application must be in the form and manner
6.14 prescribed by the commissioner. The application must:

6.15 (1) demonstrate to the commissioner that the entity, if it is a nonprofit organization, has
6.16 been granted an exemption from the federal income tax as an organization described in
6.17 section 501(c)(3) of the Internal Revenue Code; and

6.18 (2) demonstrate the entity's financial accountability by submitting its most recent audited
6.19 financial statement prepared by a certified public accountant firm licensed under chapter
6.20 326A using the Statements on Auditing Standards issued by the Audit Standards Board of
6.21 the American Institute of Certified Public Accountants.

6.22 (c) A qualified foundation must provide to taxpayers who make donations or
6.23 commitments to donate a receipt or verification on a form approved by the commissioner.

6.24 (d) A qualified foundation in each year it awards qualified scholarships to eligible
6.25 students to enroll in a qualified school must obtain from the qualified school documentation
6.26 that the school:

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

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

6.29 (iii) certifies that it adheres to the provisions of chapter 363A and United States Code,
6.30 title 42, section 1981; and

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

7.3 A qualified foundation must make the documentation available to the commissioner on
7.4 request.

7.5 (e) A qualified foundation must, by June 1 of each year following a year in which it
7.6 receives donations and awards scholarships, provide the following information to the
7.7 commissioner:

7.8 (1) financial information that demonstrates the financial viability of the qualified
7.9 foundation, if it is to receive donations of \$150,000 or more during the year;

7.10 (2) documentation that it has conducted criminal background checks on all of its
7.11 employees and board members and has excluded from employment or governance any
7.12 individuals who might reasonably pose a risk to the appropriate use of contributed funds;

7.13 (3) consistent with paragraph (f), document that it has used amounts received as donations
7.14 to provide qualified scholarships within one calendar year of the calendar year in which it
7.15 received the donation;

7.16 (4) a listing of qualified schools that enrolled eligible students to whom the qualified
7.17 foundation awarded qualified scholarships; and

7.18 (5) the following information prepared by a certified public accountant regarding
7.19 donations received and scholarships awarded in the previous calendar year:

7.20 (i) the total number and total dollar amount of donations received from taxpayers;

7.21 (ii) the total number and total dollar amount of qualified scholarships awarded; and

7.22 (iii) the dollar amount of donations used for administrative expenses, as allowed by
7.23 paragraph (f).

7.24 (f) The foundation may use up to five percent of the amounts received as donations for
7.25 reasonable administrative expenses, including but not limited to fund-raising, scholarship
7.26 tracking, and reporting requirements.

7.27 Subd. 5. **Responsibilities of commissioner.** (a) The commissioner must make
7.28 applications for an entity to be approved as a qualified foundation for a taxable year available
7.29 on the department's Web site by August 1 of the year preceding the taxable year. The
7.30 commissioner must approve an application that provides the documentation required in
7.31 subdivision 4, paragraph (b), clauses (1) and (2), within 60 days of receiving the application.

8.1 The commissioner must notify a foundation that provides incomplete documentation and
8.2 the foundation may resubmit its application within 30 days.

8.3 (b) By November 15 of each year, the commissioner must post on the department's Web
8.4 site the names and addresses of qualified foundations for the next taxable year. The
8.5 commissioner must regularly update the names and addresses of any qualified foundations
8.6 that have been barred from participating in the program.

8.7 (c) The commissioner must prescribe a standardized format for a receipt to be issued by
8.8 a qualified foundation to a taxpayer to indicate the value of a donation received and of a
8.9 commitment to make a donation.

8.10 (d) The commissioner must prescribe a standardized format for qualified foundations
8.11 to report the information required under subdivision 4, paragraph (e).

8.12 (e) The commissioner may conduct either a financial review or audit of a qualified
8.13 foundation upon finding evidence of fraud or intentional misreporting. If the commissioner
8.14 determines that the qualified foundation committed fraud or intentionally misreported
8.15 information, the qualified foundation is barred from further program participation.

8.16 (f) If a qualified foundation fails to submit the documentation required under subdivision
8.17 4, paragraph (c), by June 1, the commissioner must notify the qualified foundation by July
8.18 1. A qualified foundation that fails to submit the required information by August 1 is barred
8.19 from participation for the next taxable year.

8.20 (g) If a qualified foundation fails to comply with the requirements of subdivision 4,
8.21 paragraph (c), the commissioner must by September 1 notify the qualified foundation that
8.22 it has until November 1 to document that it has remedied its noncompliance. A qualified
8.23 foundation that fails to document that it has remedied its noncompliance by November 1 is
8.24 barred from participation for the next taxable year.

8.25 (h) A qualified foundation barred under paragraph (f) or (g) may become eligible to
8.26 participate by submitting the required information in future years.

8.27 **EFFECTIVE DATE.** This section is effective the day following final enactment for
8.28 donations made and credits allowed in taxable years beginning after December 31, 2017.

8.29 **Sec. 6. PURPOSE STATEMENT; TAX EXPENDITURES.**

8.30 Subdivision 1. **Authority.** This section is intended to fulfill the requirement under
8.31 Minnesota Statutes, section 3.192, that a bill creating, renewing, or continuing a tax

9.1 expenditure provide a purpose for the tax expenditure and a standard or goal against which
9.2 its effectiveness is measured.

9.3 Subd. 2. Credit providing equity and opportunity in education tax credit. The
9.4 provisions of section 3, providing a tax credit to expand educational choice, are intended
9.5 to give financial assistance to low-income and middle-income families who seek better
9.6 educational opportunities for their children. The standard against which the effectiveness
9.7 of the credit is to be measured is the total number of eligible students who receive opportunity
9.8 scholarships and better educational opportunities as a result of donations from corporations
9.9 and individuals that qualify for the tax credit.