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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1909

03/04/2021 Authored by Davids, Robbins and Dettmer
The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; individual income; allowing a pass-through entity to file and
1.3 pay a pass-through entity income tax; amending Minnesota Statutes 2020, sections
1.4 289A.08, by adding a subdivision; 290.0132, by adding a subdivision; 290.06,
1.5 subdivision 2c; 290.091, subdivision 2; 290.92, subdivisions 4b, 4c.

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

1.7 Section 1. Minnesota Statutes 2020, section 289A.08, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 7a. Pass-through entity tax. (a) For the purposes of this subdivision, the following
1.10 terms have the meanings given:

1.11 (1) "income" has the meaning given in subdivision 7, paragraph (j), except that the
1.12 provisions that apply to a partnership apply to a qualifying entity and the provisions applying
1.13 to a partner apply to a qualifying owner. The income of both a resident and nonresident
1.14 qualifying owner is allocated and assigned to this state as provided for nonresident partners
1.15 and shareholders under section 290.17;

1.16 (2) "qualifying owner" means an individual partner, member, or shareholder of a
1.17 qualifying entity; and

1.18 (3) "qualifying entity" means a partnership, limited liability company, or corporation
1.19 organized under subchapter S of the Internal Revenue Code for federal income tax purposes,
1.20 including a qualified subsidiary also organized under subchapter S of the Internal Revenue
1.21 Code, but "qualifying entity" does not include a partnership, limited liability company, or
1.22 corporation that has a partnership, limited liability company, or corporation as a partner,
1.23 member or shareholder.

2.1 (b) A qualifying entity may elect to file a return and pay the pass-through entity tax
2.2 imposed under paragraph (c). The election:

2.3 (1) must be made on or before the due date or extended due date of the qualifying entity's
2.4 pass-through entity tax return;

2.5 (2) may only be made by qualifying owners who hold more than a 50 percent ownership
2.6 interest in a qualifying entity; and

2.7 (3) is binding on all qualifying owners who have an ownership interest in the qualifying
2.8 entity.

2.9 (c) Subject to the election in paragraph (b), a pass-through entity tax is imposed on a
2.10 qualifying entity in an amount equal to the sum of the tax liability of each qualifying owner.

2.11 (d) The amount of a qualifying owner's tax liability under paragraph (c) is the amount
2.12 of the qualifying owner's income multiplied by the highest rate used to determine the tax
2.13 liability for individuals under section 290.06, subdivision 2c. When making this
2.14 determination:

2.15 (1) nonbusiness deductions, standard deductions, or personal exemptions are not allowed;
2.16 and

2.17 (2) a credit or deduction is allowed only to the extent allowed to the qualifying owner.

2.18 (e) The amount of each credit and deduction used to determine a qualifying owner's tax
2.19 liability under paragraph (d) must also be used to determine that qualifying owner's individual
2.20 income tax liability under chapter 290.

2.21 (f) This subdivision does not negate the requirement that a qualifying owner pay estimated
2.22 tax if the qualifying owner's tax liability would exceed the requirements set forth in section
2.23 289A.25. The qualifying owner's liability to pay estimated tax is, however, satisfied when
2.24 the qualifying entity pays estimated tax in the manner prescribed in section 289A.25 for
2.25 composite estimated tax.

2.26 (g) A qualifying owner's adjusted basis in the interest in the qualifying entity, and the
2.27 treatment of distributions, is determined as if the election to pay the pass-through entity tax
2.28 under paragraph (b) is not made.

2.29 (h) To the extent not inconsistent with this subdivision, for purposes of this chapter, a
2.30 pass-through entity tax return must be treated as a composite return and a qualifying entity
2.31 filing a pass-through entity tax return must be treated as a partnership filing a composite
2.32 return.

3.1 (i) The provisions of subdivision 17 apply to the election to pay the pass-through entity
 3.2 tax under this subdivision.

3.3 (j) Nothing in this subdivision prevents a qualifying entity electing to pay the pass-through
 3.4 entity tax from also filing a composite return and paying tax for an electing partner as
 3.5 allowed in that subdivision.

3.6 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 3.7 31, 2020.

3.8 Sec. 2. Minnesota Statutes 2020, section 290.0132, is amended by adding a subdivision
 3.9 to read:

3.10 **Subd. 30. Subtraction for pass-through entity tax.** The amount of a qualifying owner's
 3.11 income used to determine tax liability under section 289A.08, subdivision 7a, paragraph
 3.12 (d), is a subtraction.

3.13 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 3.14 31, 2020.

3.15 Sec. 3. Minnesota Statutes 2020, section 290.06, subdivision 2c, is amended to read:

3.16 **Subd. 2c. Schedules of rates for individuals, estates, and trusts.** (a) The income taxes
 3.17 imposed by this chapter upon married individuals filing joint returns and surviving spouses
 3.18 as defined in section 2(a) of the Internal Revenue Code must be computed by applying to
 3.19 their taxable net income the following schedule of rates:

3.20 (1) On the first \$38,770, 5.35 percent;

3.21 (2) On all over \$38,770, but not over \$154,020, 6.8 percent;

3.22 (3) On all over \$154,020, but not over \$269,010, 7.85 percent;

3.23 (4) On all over \$269,010, 9.85 percent.

3.24 Married individuals filing separate returns, estates, and trusts must compute their income
 3.25 tax by applying the above rates to their taxable income, except that the income brackets
 3.26 will be one-half of the above amounts after the adjustment required in subdivision 2d.

3.27 (b) The income taxes imposed by this chapter upon unmarried individuals must be
 3.28 computed by applying to taxable net income the following schedule of rates:

3.29 (1) On the first \$26,520, 5.35 percent;

3.30 (2) On all over \$26,520, but not over \$87,110, 6.8 percent;

4.1 (3) On all over \$87,110, but not over \$161,720, 7.85 percent;

4.2 (4) On all over \$161,720, 9.85 percent.

4.3 (c) The income taxes imposed by this chapter upon unmarried individuals qualifying as
4.4 a head of household as defined in section 2(b) of the Internal Revenue Code must be
4.5 computed by applying to taxable net income the following schedule of rates:

4.6 (1) On the first \$32,650, 5.35 percent;

4.7 (2) On all over \$32,650, but not over \$131,190, 6.8 percent;

4.8 (3) On all over \$131,190, but not over \$214,980, 7.85 percent;

4.9 (4) On all over \$214,980, 9.85 percent.

4.10 (d) In lieu of a tax computed according to the rates set forth in this subdivision, the tax
4.11 of any individual taxpayer whose taxable net income for the taxable year is less than an
4.12 amount determined by the commissioner must be computed in accordance with tables
4.13 prepared and issued by the commissioner of revenue based on income brackets of not more
4.14 than \$100. The amount of tax for each bracket shall be computed at the rates set forth in
4.15 this subdivision, provided that the commissioner may disregard a fractional part of a dollar
4.16 unless it amounts to 50 cents or more, in which case it may be increased to \$1.

4.17 (e) An individual who is not a Minnesota resident for the entire year must compute the
4.18 individual's Minnesota income tax as provided in this subdivision. After the application of
4.19 the nonrefundable credits provided in this chapter, the tax liability must then be multiplied
4.20 by a fraction in which:

4.21 (1) the numerator is the individual's Minnesota source federal adjusted gross income as
4.22 defined in section 62 of the Internal Revenue Code and increased by:

4.23 (i) the additions required under sections 290.0131, subdivisions 2, 6, 8 to 10, 16, and
4.24 17, and 290.0137, paragraph (a); and reduced by

4.25 (ii) the Minnesota assignable portion of the subtraction for United States government
4.26 interest under section 290.0132, subdivision 2, the subtractions under sections 290.0132,
4.27 subdivisions 9, 10, 14, 15, 17, 18, ~~and 27~~, and 30, and 290.0137, paragraph (c), after applying
4.28 the allocation and assignability provisions of section 290.081, clause (a), or 290.17; and

4.29 (2) the denominator is the individual's federal adjusted gross income as defined in section
4.30 62 of the Internal Revenue Code, increased by:

4.31 (i) the additions required under sections 290.0131, subdivisions 2, 6, 8 to 10, 16, and
4.32 17, and 290.0137, paragraph (a); and reduced by

5.1 (ii) the subtractions under sections 290.0132, subdivisions 2, 9, 10, 14, 15, 17, 18, ~~and~~
5.2 27, and 30, and 290.0137, paragraph (c).

5.3 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
5.4 31, 2020.

5.5 Sec. 4. Minnesota Statutes 2020, section 290.091, subdivision 2, is amended to read:

5.6 Subd. 2. **Definitions.** For purposes of the tax imposed by this section, the following
5.7 terms have the meanings given.

5.8 (a) "Alternative minimum taxable income" means the sum of the following for the taxable
5.9 year:

5.10 (1) the taxpayer's federal alternative minimum taxable income as defined in section
5.11 55(b)(2) of the Internal Revenue Code;

5.12 (2) the taxpayer's itemized deductions allowed in computing federal alternative minimum
5.13 taxable income, but excluding:

5.14 (i) the charitable contribution deduction under section 170 of the Internal Revenue Code;

5.15 (ii) the medical expense deduction;

5.16 (iii) the casualty, theft, and disaster loss deduction; and

5.17 (iv) the impairment-related work expenses of a person with a disability;

5.18 (3) for depletion allowances computed under section 613A(c) of the Internal Revenue
5.19 Code, with respect to each property (as defined in section 614 of the Internal Revenue Code),
5.20 to the extent not included in federal alternative minimum taxable income, the excess of the
5.21 deduction for depletion allowable under section 611 of the Internal Revenue Code for the
5.22 taxable year over the adjusted basis of the property at the end of the taxable year (determined
5.23 without regard to the depletion deduction for the taxable year);

5.24 (4) to the extent not included in federal alternative minimum taxable income, the amount
5.25 of the tax preference for intangible drilling cost under section 57(a)(2) of the Internal Revenue
5.26 Code determined without regard to subparagraph (E);

5.27 (5) to the extent not included in federal alternative minimum taxable income, the amount
5.28 of interest income as provided by section 290.0131, subdivision 2;

5.29 (6) the amount of addition required by section 290.0131, subdivisions 9, 10, and 16;

5.30 (7) the deduction allowed under section 199A of the Internal Revenue Code, to the extent
5.31 not included in the addition required under clause (6); and

6.1 (8) to the extent not included in federal alternative minimum taxable income, the amount
6.2 of foreign-derived intangible income deducted under section 250 of the Internal Revenue
6.3 Code;

6.4 less the sum of the amounts determined under the following:

6.5 (i) interest income as defined in section 290.0132, subdivision 2;

6.6 (ii) an overpayment of state income tax as provided by section 290.0132, subdivision
6.7 3, to the extent included in federal alternative minimum taxable income;

6.8 (iii) the amount of investment interest paid or accrued within the taxable year on
6.9 indebtedness to the extent that the amount does not exceed net investment income, as defined
6.10 in section 163(d)(4) of the Internal Revenue Code. Interest does not include amounts deducted
6.11 in computing federal adjusted gross income;

6.12 (iv) amounts subtracted from federal taxable or adjusted gross income as provided by
6.13 section 290.0132, subdivisions 7, 9 to 15, 17, 21, 24, and 26 to ~~29~~ 30;

6.14 (v) the amount of the net operating loss allowed under section 290.095, subdivision 11,
6.15 paragraph (c); and

6.16 (vi) the amount allowable as a Minnesota itemized deduction under section 290.0122,
6.17 subdivision 7.

6.18 In the case of an estate or trust, alternative minimum taxable income must be computed
6.19 as provided in section 59(c) of the Internal Revenue Code, except alternative minimum
6.20 taxable income must be increased by the addition in section 290.0131, subdivision 16.

6.21 (b) "Investment interest" means investment interest as defined in section 163(d)(3) of
6.22 the Internal Revenue Code.

6.23 (c) "Net minimum tax" means the minimum tax imposed by this section.

6.24 (d) "Regular tax" means the tax that would be imposed under this chapter (without regard
6.25 to this section and section 290.032), reduced by the sum of the nonrefundable credits allowed
6.26 under this chapter.

6.27 (e) "Tentative minimum tax" equals 6.75 percent of alternative minimum taxable income
6.28 after subtracting the exemption amount determined under subdivision 3.

6.29 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
6.30 31, 2020.

7.1 Sec. 5. Minnesota Statutes 2020, section 290.92, subdivision 4b, is amended to read:

7.2 Subd. 4b. **Withholding by partnerships.** (a) A partnership shall deduct and withhold
7.3 a tax as provided in paragraph (b) for nonresident individual partners based on their
7.4 distributive shares of partnership income for a taxable year of the partnership.

7.5 (b) The amount of tax withheld is determined by multiplying the partner's distributive
7.6 share allocable to Minnesota under section 290.17, paid or credited during the taxable year
7.7 by the highest rate used to determine the income tax liability for an individual under section
7.8 290.06, subdivision 2c, except that the amount of tax withheld may be determined by the
7.9 commissioner if the partner submits a withholding exemption certificate under subdivision
7.10 5.

7.11 (c) The commissioner may reduce or abate the tax withheld under this subdivision if the
7.12 partnership had reasonable cause to believe that no tax was due under this section.

7.13 (d) Notwithstanding paragraph (a), a partnership is not required to deduct and withhold
7.14 tax for a nonresident partner if:

7.15 (1) the partner elects to have the tax due paid as part of the partnership's composite return
7.16 under section 289A.08, subdivision 7;

7.17 (2) the partner has Minnesota assignable federal adjusted gross income from the
7.18 partnership of less than \$1,000; or

7.19 (3) the partnership is liquidated or terminated, the income was generated by a transaction
7.20 related to the termination or liquidation, and no cash or other property was distributed in
7.21 the current or prior taxable year;

7.22 (4) the distributive shares of partnership income are attributable to:

7.23 (i) income required to be recognized because of discharge of indebtedness;

7.24 (ii) income recognized because of a sale, exchange, or other disposition of real estate,
7.25 depreciable property, or property described in section 179 of the Internal Revenue Code;
7.26 or

7.27 (iii) income recognized on the sale, exchange, or other disposition of any property that
7.28 has been the subject of a basis reduction pursuant to section 108, 734, 743, 754, or 1017 of
7.29 the Internal Revenue Code

7.30 to the extent that the income does not include cash received or receivable or, if there is cash
7.31 received or receivable, to the extent that the cash is required to be used to pay indebtedness
7.32 by the partnership or a secured debt on partnership property; ~~or~~

8.1 (5) the partnership is a publicly traded partnership, as defined in section 7704(b) of the
8.2 Internal Revenue Code; or

8.3 (6) the partnership has elected to pay the pass-through entity tax under section 289A.08,
8.4 subdivision 7a.

8.5 (e) For purposes of sections 270C.60, 289A.09, subdivision 2, 289A.20, subdivision 2,
8.6 paragraph (c), 289A.50, 289A.56, 289A.60, and 289A.63, a partnership is considered an
8.7 employer.

8.8 (f) To the extent that income is exempt from withholding under paragraph (d), clause
8.9 (4), the commissioner has a lien in an amount up to the amount that would be required to
8.10 be withheld with respect to the income of the partner attributable to the partnership interest,
8.11 but for the application of paragraph (d), clause (4). The lien arises under section 270C.63
8.12 from the date of assessment of the tax against the partner, and attaches to that partner's share
8.13 of the profits and any other money due or to become due to that partner in respect of the
8.14 partnership. Notice of the lien may be sent by mail to the partnership, without the necessity
8.15 for recording the lien. The notice has the force and effect of a levy under section 270C.67,
8.16 and is enforceable against the partnership in the manner provided by that section. Upon
8.17 payment in full of the liability subsequent to the notice of lien, the partnership must be
8.18 notified that the lien has been satisfied.

8.19 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
8.20 31, 2020.

8.21 Sec. 6. Minnesota Statutes 2020, section 290.92, subdivision 4c, is amended to read:

8.22 Subd. 4c. **Withholding by S corporations.** (a) A corporation having a valid election in
8.23 effect under section 290.9725 shall deduct and withhold a tax as provided in paragraph (b)
8.24 for nonresident individual shareholders their share of the corporation's income for the taxable
8.25 year.

8.26 (b) The amount of tax withheld is determined by multiplying the amount of income
8.27 allocable to Minnesota under section 290.17 by the highest rate used to determine the income
8.28 tax liability of an individual under section 290.06, subdivision 2c, except that the amount
8.29 of tax withheld may be determined by the commissioner if the shareholder submits a
8.30 withholding exemption certificate under subdivision 5.

8.31 (c) Notwithstanding paragraph (a), a corporation is not required to deduct and withhold
8.32 tax for a nonresident shareholder, if:

9.1 (1) the shareholder elects to have the tax due paid as part of the corporation's composite
9.2 return under section 289A.08, subdivision 7;

9.3 (2) the shareholder has Minnesota assignable federal adjusted gross income from the
9.4 corporation of less than \$1,000; ~~or~~

9.5 (3) the corporation is liquidated or terminated, the income was generated by a transaction
9.6 related to the termination or liquidation, and no cash or other property was distributed in
9.7 the current or prior taxable year; or

9.8 (4) the S corporation has elected to pay the pass-through entity tax under section 289A.08,
9.9 subdivision 7a.

9.10 (d) For purposes of sections 270C.60, 289A.09, subdivision 2, 289A.20, subdivision 2,
9.11 paragraph (c), 289A.50, 289A.56, 289A.60, and 289A.63, a corporation is considered an
9.12 employer.

9.13 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
9.14 31, 2020.