SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 2390

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DATE	D-PG	OFFICIAL STATUS
03/12/2012	4317	Introduction and first reading Referred to Jobs and Economic Growth
03/14/2012		Comm report: To pass as amended and re-refer to Taxes

A bill for an act

relating to economic development; establishing a technology corporate franchise tax certificate transfer program; amending Minnesota Statutes 2010, sections 290.01, subdivision 29; 290.06, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 116J.

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

Section 1. **[116J.8738] TECHNOLOGY CORPORATE FRANCHISE TAX CERTIFICATE TRANSFER PROGRAM.**

Subdivision 1. **Program established.** The commissioner shall establish a corporate franchise tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology companies in this state with unused net operating loss carryovers under section 290.095 to surrender those tax benefits for use by other corporate franchise taxpayers in this state. The tax benefits may be used on the corporate franchise tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporate franchise taxpayer that is the recipient of the tax benefit certificate to assist in the funding of costs incurred by the new or expanding emerging technology and biotechnology company.

Subd. 2. **Definitions.** (a) For purposes of this section, the following terms have the meanings given, unless the context clearly requires otherwise.

(b) "Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and subatomic levels, as well as novel products, services, technologies, and sub-technologies developed as a result of insights gained from research advances that add to that body of fundamental knowledge.

(c) "Biotechnology company" means an emerging corporation that:

(1) has its headquarters or base of operations in this state;

(2) owns, has filed for, or has a valid license to use protected, proprietary intellectual property; and

(3) is engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes.

(d) "Full-time employee" means a person employed by a new or expanding emerging technology or biotechnology company for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment and whose wages are subject to withholding as provided in section 290.92, or who is a partner of a new or expanding emerging technology or biotechnology company who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in section 289A.25. To qualify as a full-time employee, an employee must also receive from the new or expanding emerging technology or biotechnology company group health benefits under a health plan as defined under section 62A.011, subdivision 3, or under a self-insured employee welfare benefit plan as defined in United States Code, title 29, section 1002. Full-time employee excludes any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology company.

(e) "New or expanding" means a technology or biotechnology company that:

(1) on June 30 of the year in which the corporation files an application for surrender of unused but otherwise allowable tax benefits under this section and on the date of the exchange of the corporate franchise tax benefit certificate, has fewer than 250 employees in the United States;

(2) on June 30 of the year in which the corporation files the application, has at least one full-time employee working in this state if the company has been incorporated for less than three years, has at least five full-time employees working in this state if the company has been incorporated for more than three years but less than five years, and has at least ten full-time employees working in this state if the company has been incorporated for more than five years; and

(3) on the date of the exchange of the corporate franchise tax benefit certificate, the corporation has the number of full-time employees in this state required by clause (2).

Subd. 3. **Allocation of tax benefits; annual limit.** (a) The commissioner, in cooperation with the commissioner of revenue, shall review and approve applications by new or expanding emerging technology and biotechnology companies in this state with unused but otherwise allowable net operating loss carryover under section 290.095, to surrender those tax benefits in exchange for private financial assistance to be made by the corporate franchise taxpayer that is the recipient of the corporate franchise tax benefit certificate in an amount equal to at least 80 percent of the amount of the surrendered tax benefit. The amount of the surrendered tax benefit is the amount of the net operating loss carryover multiplied by the new or expanding emerging technology or biotechnology company's anticipated apportionment percentage, as determined under section 290.191, for the taxable year in which the benefit is transferred and subsequently multiplied by the corporate franchise tax rate under section 290.06, subdivision 1.

(b) The commissioner must approve the transfer of no more than $60,000,000 of tax benefits in each fiscal year. If the total amount of transferable tax benefits requested to be surrendered by approved applicants exceeds $60,000,000 for a fiscal year, the commissioner, in cooperation with the commissioner of revenue, must not approve the transfer of more than $60,000,000 for that fiscal year and shall allocate the transfer of tax benefits by approved corporations using the following method:

(1) an eligible applicant with $250,000 or less of transferable tax benefits is authorized to surrender the entire amount of its transferable tax benefits;

(2) an eligible applicant with more than $250,000 of transferable tax benefits is authorized to surrender a minimum of $250,000 of its transferable tax benefits; and

(3) an eligible applicant with more than $250,000 of transferable tax benefits is authorized to surrender additional transferable tax benefits determined by multiplying the applicant's transferable tax benefits less the minimum transferable tax benefits that corporation is authorized to surrender under clause (2) by a fraction, the numerator of which is the total amount of transferable tax benefits that the commissioner is authorized to approve less the total amount of transferable tax benefits approved under clauses (1) and (2) and the denominator of which is the total amount of transferable tax benefits requested to be surrendered by all eligible applicants less the total amount of transferable tax benefits approved under clauses (1) and (2).

(c) If the total amount of transferable tax benefits that would be authorized using the method under paragraph (b) exceeds $60,000,000 for a fiscal year, then the commissioner, in cooperation with the commissioner of revenue, shall limit the total amount of tax benefits authorized to be transferred to $60,000,000 by applying the above method on an apportioned basis.

Subd. 4. **Qualifying tax benefits and corporations.** For purposes of this section, transferable tax benefits include an eligible applicant's unused but otherwise allowable carryover of net operating losses multiplied by the applicant's anticipated allocation factor as determined under section 290.191 for the taxable year in which the benefit is transferred and subsequently multiplied by the corporation franchise tax rate under section 290.06, subdivision 1. An eligible applicant's transferable tax benefits are limited to net operating losses that the applicant requests to surrender in its application to the authority and must not, in total, exceed the maximum amount of tax benefits that the applicant is eligible to surrender. No application for a corporate franchise tax benefit transfer certificate must be approved in which the new or expanding emerging technology or biotechnology company:

(1) has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board; or

(2) is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board or is part of a consolidated group of affiliated corporations, as filed for federal income tax purposes, that in the aggregate has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its combined financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board.

The maximum lifetime value of surrendered tax benefits that a corporation is permitted to surrender under the program is $15,000,000.

Subd. 5. **Recapture of tax benefits.** The commissioner, in consultation with the commissioner of revenue, shall establish rules for the recapture of all, or a portion of, the amount of a grant of a corporate franchise tax benefit certificate from the new or expanding emerging technology or biotechnology company having surrendered tax benefits under this section if the taxpayer fails to use the private financial assistance received for the surrender of tax benefits as required by this section or fails to maintain a headquarters or a base of operation in this state during the five years following receipt of the private financial assistance; except if the failure to maintain a headquarters or a base of operation in this state is due to the liquidation of the new or expanding emerging technology or biotechnology company.

Subd. 6. **Approval of acquisition of tax benefits; purposes; required agreement.** (a) The commissioner, in cooperation with the commissioner of revenue, shall review and approve applications by taxpayers under the corporate franchise tax in chapter 290 to acquire surrendered tax benefits approved under subdivision 3, which must be issued in the form of corporate franchise tax benefit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 75 percent of the amount of the surrendered tax benefit of an emerging technology or biotechnology company. The commissioner must not issue a corporate franchise tax benefit transfer certificate, unless the applicant certifies that as of the date of the exchange of the corporate franchise tax benefit certificate it is operating as a new or expanding emerging technology or biotechnology company and has no current intention to cease operating as a new or expanding emerging technology or biotechnology company.

(b) The private financial assistance shall assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in this state, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures, and any other expenses determined by the commissioner to be necessary to carry out emerging technology or biotechnology company operations in this state.

(c) The commissioner shall require a corporate franchise taxpayer that acquires a corporate franchise tax benefit certificate to enter into a written agreement with the new or expanding emerging technology or biotechnology company concerning the terms and conditions of the private financial assistance made in exchange for the certificate. The written agreement may contain terms concerning the maintenance by the new or expanding emerging technology or biotechnology company of a headquarters or a base of operation in this state.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to taxable years beginning after December 31, 2011.

Sec. 2. Minnesota Statutes 2010, section 290.01, subdivision 29, is amended to read:

Subd. 29. **Taxable income.** The term "taxable income" means:

(1) for individuals, estates, and trusts, the same as taxable net income;

(2) for corporations, the taxable net income less

(i) the net operating loss deduction under section 290.095, excluding any amount surrendered under section 116J.8738;

(ii) the dividends received deduction under section 290.21, subdivision 4;

(iii) the exemption for operating in a job opportunity building zone under section 469.317;

(iv) the exemption for operating in a biotechnology and health sciences industry zone under section 469.337; and

(v) the exemption for operating in an international economic development zone under section 469.326.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2011.

Sec. 3. Minnesota Statutes 2010, section 290.06, is amended by adding a subdivision to read:

Subd. 36. **Credit; technology corporate franchise tax certificate transfer.** A taxpayer may take a credit against the tax imposed under subdivision 1 or section 290.0921 equal to the amount of the transferable tax benefits certified to the taxpayer for the taxable year by the commissioner of employment and economic development under section 116J.8738.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2011.