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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-SIXTH
SESSION**

HOUSE FILE No. 392

January 29, 2009

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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; federal update; amending Minnesota Statutes 2008, sections
1.3 289A.02, subdivision 7; 290.01, subdivisions 19, 19a, 31; 290.067, subdivision
1.4 2a; 290A.03, subdivisions 3, 15; 291.005, subdivision 1.

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

1.6 Section 1. Minnesota Statutes 2008, section 289A.02, subdivision 7, is amended to
1.7 read:

1.8 Subd. 7. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal
1.9 Revenue Code" means the Internal Revenue Code of 1986, as amended through ~~February~~
1.10 ~~13~~ June 17, 2008.

1.11 **EFFECTIVE DATE.** This section is effective the day following final enactment,
1.12 except the changes incorporated by federal changes are effective at the same time as the
1.13 changes were effective for federal purposes.

1.14 Sec. 2. Minnesota Statutes 2008, section 290.01, subdivision 19, is amended to read:

1.15 Subd. 19. **Net income.** The term "net income" means the federal taxable income,
1.16 as defined in section 63 of the Internal Revenue Code of 1986, as amended through the
1.17 date named in this subdivision, incorporating the federal effective dates of changes to the
1.18 Internal Revenue Code and any elections made by the taxpayer in accordance with the
1.19 Internal Revenue Code in determining federal taxable income for federal income tax
1.20 purposes, and with the modifications provided in subdivisions 19a to 19f.

1.21 In the case of a regulated investment company or a fund thereof, as defined in section
1.22 851(a) or 851(g) of the Internal Revenue Code, federal taxable income means investment

2.1 company taxable income as defined in section 852(b)(2) of the Internal Revenue Code,
 2.2 except that:

2.3 (1) the exclusion of net capital gain provided in section 852(b)(2)(A) of the Internal
 2.4 Revenue Code does not apply;

2.5 (2) the deduction for dividends paid under section 852(b)(2)(D) of the Internal
 2.6 Revenue Code must be applied by allowing a deduction for capital gain dividends and
 2.7 exempt-interest dividends as defined in sections 852(b)(3)(C) and 852(b)(5) of the Internal
 2.8 Revenue Code; and

2.9 (3) the deduction for dividends paid must also be applied in the amount of any
 2.10 undistributed capital gains which the regulated investment company elects to have treated
 2.11 as provided in section 852(b)(3)(D) of the Internal Revenue Code.

2.12 The net income of a real estate investment trust as defined and limited by section
 2.13 856(a), (b), and (c) of the Internal Revenue Code means the real estate investment trust
 2.14 taxable income as defined in section 857(b)(2) of the Internal Revenue Code.

2.15 The net income of a designated settlement fund as defined in section 468B(d) of
 2.16 the Internal Revenue Code means the gross income as defined in section 468B(b) of the
 2.17 Internal Revenue Code.

2.18 The Internal Revenue Code of 1986, as amended through ~~February 13~~ June 17,
 2.19 2008, other than changes included in Public Law 110-234, and as amended by division C,
 2.20 sections 202, 203, and 204 of Public Law 110-343 and sections 3012 and 3023 of Public
 2.21 Law 110-289, shall be in effect for taxable years beginning after December 31, 1996.

2.22 Except as otherwise provided, references to the Internal Revenue Code in
 2.23 subdivisions 19 to 19f mean the code in effect for purposes of determining net income for
 2.24 the applicable year.

2.25 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 2.26 December 31, 2007.

2.27 Sec. 3. Minnesota Statutes 2008, section 290.01, subdivision 19a, is amended to read:

2.28 Subd. 19a. **Additions to federal taxable income.** For individuals, estates, and
 2.29 trusts, there shall be added to federal taxable income:

2.30 (1)(i) interest income on obligations of any state other than Minnesota or a political
 2.31 or governmental subdivision, municipality, or governmental agency or instrumentality
 2.32 of any state other than Minnesota exempt from federal income taxes under the Internal
 2.33 Revenue Code or any other federal statute; and

2.34 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue
 2.35 Code, except the portion of the exempt-interest dividends derived from interest income

3.1 on obligations of the state of Minnesota or its political or governmental subdivisions,
3.2 municipalities, governmental agencies or instrumentalities, but only if the portion of the
3.3 exempt-interest dividends from such Minnesota sources paid to all shareholders represents
3.4 95 percent or more of the exempt-interest dividends that are paid by the regulated
3.5 investment company as defined in section 851(a) of the Internal Revenue Code, or the
3.6 fund of the regulated investment company as defined in section 851(g) of the Internal
3.7 Revenue Code, making the payment; ~~and~~

3.8 ~~(iii) For the purposes of items (i) and (ii) this clause,~~ interest on obligations of an Indian
3.9 tribal government described in section 7871(c) of the Internal Revenue Code shall be
3.10 treated as interest income on obligations of the state in which the tribe is located; ~~and~~
3.11 interest and dividends from obligations guaranteed by a federal home loan bank are
3.12 considered exempt from federal taxation to the same extent that they are exempt under
3.13 section 3023 of Public Law 110-289;

3.14 (2) the amount of income or sales and use taxes paid or accrued within the taxable
3.15 year under this chapter and the amount of taxes based on net income paid or sales and use
3.16 taxes paid to any other state or to any province or territory of Canada, to the extent allowed
3.17 as a deduction under section 63(d) of the Internal Revenue Code, but the addition may not
3.18 be more than the amount by which the itemized deductions as allowed under section 63(d)
3.19 of the Internal Revenue Code exceeds the amount of the standard deduction as defined
3.20 in section 63(c) of the Internal Revenue Code. For the purpose of this paragraph, the
3.21 disallowance of itemized deductions under section 68 of the Internal Revenue Code of
3.22 1986, income or sales and use tax is the last itemized deduction disallowed;

3.23 (3) the capital gain amount of a lump-sum distribution to which the special tax under
3.24 section 1122(h)(3)(B)(ii) of the Tax Reform Act of 1986, Public Law 99-514, applies;

3.25 (4) the amount of income taxes paid or accrued within the taxable year under this
3.26 chapter and taxes based on net income paid to any other state or any province or territory
3.27 of Canada, to the extent allowed as a deduction in determining federal adjusted gross
3.28 income. For the purpose of this paragraph, income taxes do not include the taxes imposed
3.29 by sections 290.0922, subdivision 1, paragraph (b), 290.9727, 290.9728, and 290.9729;

3.30 (5) the amount of expense, interest, or taxes disallowed pursuant to section 290.10
3.31 other than expenses or interest used in computing net interest income for the subtraction
3.32 allowed under subdivision 19b, clause (1);

3.33 (6) the amount of a partner's pro rata share of net income which does not flow
3.34 through to the partner because the partnership elected to pay the tax on the income under
3.35 section 6242(a)(2) of the Internal Revenue Code;

4.1 (7) 80 percent of the depreciation deduction allowed under section 168(k) of the
 4.2 Internal Revenue Code. For purposes of this clause, if the taxpayer has an activity that
 4.3 in the taxable year generates a deduction for depreciation under section 168(k) and the
 4.4 activity generates a loss for the taxable year that the taxpayer is not allowed to claim for
 4.5 the taxable year, "the depreciation allowed under section 168(k)" for the taxable year is
 4.6 limited to excess of the depreciation claimed by the activity under section 168(k) over the
 4.7 amount of the loss from the activity that is not allowed in the taxable year. In succeeding
 4.8 taxable years when the losses not allowed in the taxable year are allowed, the depreciation
 4.9 under section 168(k) is allowed;

4.10 (8) 80 percent of the amount by which the deduction allowed by section 179 of the
 4.11 Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal
 4.12 Revenue Code of 1986, as amended through December 31, 2003;

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

4.15 (10) the exclusion allowed under section 139A of the Internal Revenue Code for
 4.16 federal subsidies for prescription drug plans;

4.17 (11) the amount of expenses disallowed under section 290.10, subdivision 2;

4.18 (12) ~~for taxable years beginning after December 31, 2006, and before January 1,~~
 4.19 ~~2008~~; the amount deducted for qualified tuition and related expenses under section 222 of
 4.20 the Internal Revenue Code, to the extent deducted from gross income; ~~and~~

4.21 (13) ~~for taxable years beginning after December 31, 2006, and before January 1,~~
 4.22 ~~2008~~; the amount deducted for certain expenses of elementary and secondary school
 4.23 teachers under section 62(a)(2)(D) of the Internal Revenue Code, to the extent deducted
 4.24 from gross income; and

4.25 (14) the additional standard deduction for property taxes payable that is allowable
 4.26 under division C, section 204 of Public Law 110-343 or section 3012 of Public Law
 4.27 110-289.

4.28 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 4.29 December 31, 2007.

4.30 Sec. 4. Minnesota Statutes 2008, section 290.01, subdivision 31, is amended to read:

4.31 Subd. 31. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal
 4.32 Revenue Code" means the Internal Revenue Code of 1986, as amended through ~~February~~
 4.33 ~~13~~ June 17, 2008.

5.1 **EFFECTIVE DATE.** This section is effective the day following final enactment,
5.2 except the changes incorporated by federal changes are effective at the same time as the
5.3 changes were effective for federal purposes.

5.4 Sec. 5. Minnesota Statutes 2008, section 290.067, subdivision 2a, is amended to read:

5.5 Subd. 2a. **Income.** (a) For purposes of this section, "income" means the sum of
5.6 the following:

5.7 (1) federal adjusted gross income as defined in section 62 of the Internal Revenue
5.8 Code; and

5.9 (2) the sum of the following amounts to the extent not included in clause (1):

5.10 (i) all nontaxable income;

5.11 (ii) the amount of a passive activity loss that is not disallowed as a result of section
5.12 469, paragraph (i) or (m) of the Internal Revenue Code and the amount of passive activity
5.13 loss carryover allowed under section 469(b) of the Internal Revenue Code;

5.14 (iii) an amount equal to the total of any discharge of qualified farm indebtedness
5.15 of a solvent individual excluded from gross income under section 108(g) of the Internal
5.16 Revenue Code;

5.17 (iv) cash public assistance and relief;

5.18 (v) any pension or annuity (including railroad retirement benefits, all payments
5.19 received under the federal Social Security Act, supplemental security income, and veterans
5.20 benefits), which was not exclusively funded by the claimant or spouse, or which was
5.21 funded exclusively by the claimant or spouse and which funding payments were excluded
5.22 from federal adjusted gross income in the years when the payments were made;

5.23 (vi) interest received from the federal or a state government or any instrumentality
5.24 or political subdivision thereof;

5.25 (vii) workers' compensation;

5.26 (viii) nontaxable strike benefits;

5.27 (ix) the gross amounts of payments received in the nature of disability income or
5.28 sick pay as a result of accident, sickness, or other disability, whether funded through
5.29 insurance or otherwise;

5.30 (x) a lump-sum distribution under section 402(e)(3) of the Internal Revenue Code of
5.31 1986, as amended through December 31, 1995;

5.32 (xi) contributions made by the claimant to an individual retirement account,
5.33 including a qualified voluntary employee contribution; simplified employee pension plan;
5.34 self-employed retirement plan; cash or deferred arrangement plan under section 401(k)

6.1 of the Internal Revenue Code; or deferred compensation plan under section 457 of the
6.2 Internal Revenue Code;

6.3 (xii) nontaxable scholarship or fellowship grants;

6.4 (xiii) the amount of deduction allowed under section 199 of the Internal Revenue
6.5 Code; ~~and~~

6.6 (xiv) the amount of deduction allowed under section 220 or 223 of the Internal
6.7 Revenue Code; and

6.8 (xv) the amount of tuition expenses and educator expenses required to be added to
6.9 income under section 290.01, subdivision 19a, clauses (12) and (13).

6.10 In the case of an individual who files an income tax return on a fiscal year basis, the
6.11 term "federal adjusted gross income" means federal adjusted gross income reflected in the
6.12 fiscal year ending in the next calendar year. Federal adjusted gross income may not be
6.13 reduced by the amount of a net operating loss carryback or carryforward or a capital loss
6.14 carryback or carryforward allowed for the year.

6.15 (b) "Income" does not include:

6.16 (1) amounts excluded pursuant to the Internal Revenue Code, sections 101(a) and
6.17 102;

6.18 (2) amounts of any pension or annuity that were exclusively funded by the claimant
6.19 or spouse if the funding payments were not excluded from federal adjusted gross income
6.20 in the years when the payments were made;

6.21 (3) surplus food or other relief in kind supplied by a governmental agency;

6.22 (4) relief granted under chapter 290A;

6.23 (5) child support payments received under a temporary or final decree of dissolution
6.24 or legal separation; and

6.25 (6) restitution payments received by eligible individuals and excludable interest as
6.26 defined in section 803 of the Economic Growth and Tax Relief Reconciliation Act of
6.27 2001, Public Law 107-16.

6.28 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
6.29 December 31, 2007.

6.30 Sec. 6. Minnesota Statutes 2008, section 290A.03, subdivision 3, is amended to read:

6.31 Subd. 3. **Income.** (1) "Income" means the sum of the following:

6.32 (a) federal adjusted gross income as defined in the Internal Revenue Code; and

6.33 (b) the sum of the following amounts to the extent not included in clause (a):

6.34 (i) all nontaxable income;

7.1 (ii) the amount of a passive activity loss that is not disallowed as a result of section
7.2 469, paragraph (i) or (m) of the Internal Revenue Code and the amount of passive activity
7.3 loss carryover allowed under section 469(b) of the Internal Revenue Code;

7.4 (iii) an amount equal to the total of any discharge of qualified farm indebtedness
7.5 of a solvent individual excluded from gross income under section 108(g) of the Internal
7.6 Revenue Code;

7.7 (iv) cash public assistance and relief;

7.8 (v) any pension or annuity (including railroad retirement benefits, all payments
7.9 received under the federal Social Security Act, Supplemental Security Income, and
7.10 veterans benefits), which was not exclusively funded by the claimant or spouse, or which
7.11 was funded exclusively by the claimant or spouse and which funding payments were
7.12 excluded from federal adjusted gross income in the years when the payments were made;

7.13 (vi) interest received from the federal or a state government or any instrumentality
7.14 or political subdivision thereof;

7.15 (vii) workers' compensation;

7.16 (viii) nontaxable strike benefits;

7.17 (ix) the gross amounts of payments received in the nature of disability income or
7.18 sick pay as a result of accident, sickness, or other disability, whether funded through
7.19 insurance or otherwise;

7.20 (x) a lump-sum distribution under section 402(e)(3) of the Internal Revenue Code of
7.21 1986, as amended through December 31, 1995;

7.22 (xi) contributions made by the claimant to an individual retirement account,
7.23 including a qualified voluntary employee contribution; simplified employee pension plan;
7.24 self-employed retirement plan; cash or deferred arrangement plan under section 401(k)
7.25 of the Internal Revenue Code; or deferred compensation plan under section 457 of the
7.26 Internal Revenue Code;

7.27 (xii) nontaxable scholarship or fellowship grants;

7.28 (xiii) the amount of deduction allowed under section 199 of the Internal Revenue
7.29 Code; ~~and~~

7.30 (xiv) the amount of deduction allowed under section 220 or 223 of the Internal
7.31 Revenue Code; and

7.32 (xv) the amount of tuition expenses and educator expenses required to be added to
7.33 income under section 290.01, subdivision 19a, clauses (12) and (13).

7.34 In the case of an individual who files an income tax return on a fiscal year basis, the
7.35 term "federal adjusted gross income" shall mean federal adjusted gross income reflected
7.36 in the fiscal year ending in the calendar year. Federal adjusted gross income shall not be

8.1 reduced by the amount of a net operating loss carryback or carryforward or a capital loss
8.2 carryback or carryforward allowed for the year.

8.3 (2) "Income" does not include:

8.4 (a) amounts excluded pursuant to the Internal Revenue Code, sections 101(a) and
8.5 102;

8.6 (b) amounts of any pension or annuity which was exclusively funded by the claimant
8.7 or spouse and which funding payments were not excluded from federal adjusted gross
8.8 income in the years when the payments were made;

8.9 (c) surplus food or other relief in kind supplied by a governmental agency;

8.10 (d) relief granted under this chapter;

8.11 (e) child support payments received under a temporary or final decree of dissolution
8.12 or legal separation; or

8.13 (f) restitution payments received by eligible individuals and excludable interest as
8.14 defined in section 803 of the Economic Growth and Tax Relief Reconciliation Act of
8.15 2001, Public Law 107-16.

8.16 (3) The sum of the following amounts may be subtracted from income:

8.17 (a) for the claimant's first dependent, the exemption amount multiplied by 1.4;

8.18 (b) for the claimant's second dependent, the exemption amount multiplied by 1.3;

8.19 (c) for the claimant's third dependent, the exemption amount multiplied by 1.2;

8.20 (d) for the claimant's fourth dependent, the exemption amount multiplied by 1.1;

8.21 (e) for the claimant's fifth dependent, the exemption amount; and

8.22 (f) if the claimant or claimant's spouse was disabled or attained the age of 65
8.23 on or before December 31 of the year for which the taxes were levied or rent paid, the
8.24 exemption amount.

8.25 For purposes of this subdivision, the "exemption amount" means the exemption
8.26 amount under section 151(d) of the Internal Revenue Code for the taxable year for which
8.27 the income is reported.

8.28 **EFFECTIVE DATE.** This section is effective for property tax refunds based on
8.29 property taxes payable after December 31, 2008, and rent paid after December 31, 2007.

8.30 Sec. 7. Minnesota Statutes 2008, section 290A.03, subdivision 15, is amended to read:

8.31 Subd. 15. **Internal Revenue Code.** "Internal Revenue Code" means the Internal
8.32 Revenue Code of 1986, as amended through ~~February 13~~ June 17, 2008.

8.33 **EFFECTIVE DATE.** This section is effective for property tax refunds based on
8.34 property taxes payable after December 31, 2008, and rent paid after December 31, 2007.

9.1 Sec. 8. Minnesota Statutes 2008, section 291.005, subdivision 1, is amended to read:

9.2 Subdivision 1. **Scope.** Unless the context otherwise clearly requires, the following
9.3 terms used in this chapter shall have the following meanings:

9.4 (1) "Federal gross estate" means the gross estate of a decedent as valued and
9.5 otherwise determined for federal estate tax purposes by federal taxing authorities pursuant
9.6 to the provisions of the Internal Revenue Code.

9.7 (2) "Minnesota gross estate" means the federal gross estate of a decedent after (a)
9.8 excluding therefrom any property included therein which has its situs outside Minnesota,
9.9 and (b) including therein any property omitted from the federal gross estate which is
9.10 includable therein, has its situs in Minnesota, and was not disclosed to federal taxing
9.11 authorities.

9.12 (3) "Personal representative" means the executor, administrator or other person
9.13 appointed by the court to administer and dispose of the property of the decedent. If there
9.14 is no executor, administrator or other person appointed, qualified, and acting within this
9.15 state, then any person in actual or constructive possession of any property having a situs in
9.16 this state which is included in the federal gross estate of the decedent shall be deemed
9.17 to be a personal representative to the extent of the property and the Minnesota estate tax
9.18 due with respect to the property.

9.19 (4) "Resident decedent" means an individual whose domicile at the time of death
9.20 was in Minnesota.

9.21 (5) "Nonresident decedent" means an individual whose domicile at the time of
9.22 death was not in Minnesota.

9.23 (6) "Situs of property" means, with respect to real property, the state or country in
9.24 which it is located; with respect to tangible personal property, the state or country in which
9.25 it was normally kept or located at the time of the decedent's death; and with respect to
9.26 intangible personal property, the state or country in which the decedent was domiciled
9.27 at death.

9.28 (7) "Commissioner" means the commissioner of revenue or any person to whom the
9.29 commissioner has delegated functions under this chapter.

9.30 (8) "Internal Revenue Code" means the United States Internal Revenue Code of
9.31 1986, as amended through ~~February 13~~ June 17, 2008.

9.32 (9) "Minnesota adjusted taxable estate" means federal adjusted taxable estate as
9.33 defined by section 2011(b)(3) of the Internal Revenue Code, increased by the amount of
9.34 deduction for state death taxes allowed under section 2058 of the Internal Revenue Code.

10.1 **EFFECTIVE DATE.** This section is effective the day following final enactment,
10.2 except the changes incorporated by federal changes are effective at the same time as the
10.3 changes were effective for federal purposes.

10.4 Sec. 9. **WITHHOLDING ON DIFFERENTIAL PAY.**

10.5 The commissioner must not assess tax, penalty, or interest against an employer for
10.6 failing to withhold tax from differential wages, as defined in Internal Revenue Code,
10.7 section 3401(h)(2), paid before January 1, 2010, to an employee who has been called to
10.8 active duty in the military services.

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

10.10 Sec. 10. **MINNESOTA HOUSING BONDS EXCLUDED FROM INDIVIDUAL**
10.11 **ALTERNATIVE MINIMUM TAXABLE INCOME.**

10.12 Except to the extent includable in alternative minimum taxable income pursuant to
10.13 Minnesota Statutes, section 290.091, subdivision 2, paragraph (a), clause (5), alternative
10.14 minimum taxable income under Minnesota Statutes, section 290.091, subdivision 2,
10.15 paragraph (a), does not include interest or dividends paid from certain housing bonds
10.16 described in section 3022(a) of Public Law 110-289, to the extent the obligations
10.17 are issued by Minnesota or a political or governmental subdivision, municipality, or
10.18 governmental agency or instrumentality of Minnesota.

10.19 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
10.20 December 31, 2007, and applies to interest and dividends paid on bonds issued after
10.21 July 30, 2008.