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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **247**

January 22, 2009

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The bill was read for the first time and referred to the Committee on Taxes

January 29, 2009

By motion, recalled and re-referred to the Health Care and Human Services Policy and Oversight

1.1 A bill for an act
1.2 relating to taxation; providing for a long-term care savings plan; providing for
1.3 an income tax subtraction for contributions made to the long-term care savings
1.4 plan; amending Minnesota Statutes 2008, sections 290.01, subdivisions 19a, 19b;
1.5 290.091, subdivision 2; proposing coding for new law in Minnesota Statutes,
1.6 chapter 16A.

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

1.8 Section 1. **[16A.726] LONG-TERM CARE SAVINGS PLAN.**

1.9 Subdivision 1. **Definitions.** For purposes of this section, the following terms have
1.10 the meanings given.

1.11 (a) "Long-term care expense" means the cost of long-term care in a long-term care
1.12 facility and the cost of care provided in a person's home when the person receiving the
1.13 care is unable to perform multiple basic life functions independently.

1.14 (b) "Long-term care insurance premiums" means premiums paid for a long-term
1.15 care insurance policy, as defined in section 290.0672.

1.16 (c) "Participant" means an individual who has entered into a participation agreement
1.17 or established an account with a financial institution with which the commissioner has an
1.18 agreement under subdivision 2, paragraph (a).

1.19 (d) "Qualified individual" means:

1.20 (1) a person who incurred long-term care expenses during the taxable year; or

1.21 (2) a person who turned 50 years of age or older during the taxable year who made
1.22 payments for long-term care insurance premiums during the taxable year.

1.23 Subd. 2. **Commissioner duties; participation agreement.** (a) The Minnesota
1.24 long-term care savings plan is created. The commissioner shall select the administrator of
1.25 the plan. If the commissioner receives no acceptable responses to a request for proposals

2.1 for an administrator for the plan by November 1, 2009, the commissioner may enter into
2.2 agreements with state-chartered or federally chartered banks, savings banks, building and
2.3 loan associations, savings and loan associations, or credit unions, or a subsidiary of any
2.4 such entity, to receive contributions in the form of account deposits. The commissioner
2.5 may adopt and promulgate rules and regulations to carry out the duties under this
2.6 subdivision.

2.7 (b) If an administrator is selected, participants shall enter into participation
2.8 agreements with the commissioner, and if an administrator is not selected, participants may
2.9 make contributions to an account with a financial institution with which the commissioner
2.10 has an agreement under paragraph (a). A lifetime maximum of \$175,000 may be
2.11 contributed by a participant. The commissioner must adjust the dollar limitation annually
2.12 for inflation as provided in section 151 of the Internal Revenue Code of 1986, as amended.

2.13 (c) Each participation agreement must provide that the agreement may be canceled
2.14 or transferred to a spouse upon the terms and conditions set by the commissioner. If
2.15 the participation agreement is canceled or the Minnesota long-term care savings plan is
2.16 terminated, a participant may receive the principal amount of all contributions made
2.17 by the participant or on behalf of the participant plus the actual investment earnings on
2.18 the contributions, less any losses incurred on the contributions. A participant shall not
2.19 receive more than the fair market value of the account under the participation agreement
2.20 on the applicable liquidation date.

2.21 (d) A participant retains ownership of all contributions up to the date of use.

2.22 (e) State income tax treatment of contributions and investment earnings is as
2.23 provided in section 290.01, subdivisions 19a and 19b.

2.24 Subd. 3. **Long-term care savings plan trust.** If an administrator for the Minnesota
2.25 long-term care savings plan is selected under subdivision 2, the Minnesota long-term care
2.26 savings plan trust shall be created. The commissioner is the trustee of the trust and is
2.27 responsible for the administration, operation, and maintenance of the plan and has all the
2.28 powers necessary to carry out and effectuate the purposes, objectives, and provisions of
2.29 the Minnesota long-term care savings plan pertaining to the administration, operation, and
2.30 maintenance of the trust, except that the investment officer has fiduciary responsibility
2.31 to make all decisions regarding the investment of the money in the trust, including the
2.32 selection of all investment options and the approval of all fees and other costs charged to
2.33 trust assets, except costs for administration, operation, and maintenance of the trust, under
2.34 the directions, guidelines, and policies established by the State Board of Investment. The
2.35 commissioner may adopt and promulgate rules for the efficient administration, operation,
2.36 and maintenance of the trust. The commissioner shall not adopt and promulgate rules

3.1 and regulations that in any way interfere with the fiduciary responsibility of the state
 3.2 investment officer to make all decisions regarding the investment of money in the trust.
 3.3 The State Board of Investment may adopt and promulgate rules and regulations to provide
 3.4 for the prudent investment of the assets of the trust. The State Board of Investment or its
 3.5 designee also has the authority to select and enter into agreements with individuals and
 3.6 entities to provide investment advice and management of the assets held by the trust,
 3.7 establish investment guidelines, objectives, and performance standards with respect to
 3.8 the assets held by the trust; and approve any fees, commissions, and expenses which
 3.9 directly or indirectly affect the return on assets.

3.10 Subd. 4. **Authorized withdrawals.** A qualified individual may make withdrawals
 3.11 as a participant in the Minnesota long-term care savings plan to pay or reimburse long-term
 3.12 care expenses. A qualified individual may make withdrawals to pay or reimburse
 3.13 long-term care insurance premiums. Any participant who is not a qualified individual
 3.14 or who makes a withdrawal for any reason other than transfer of funds to a spouse,
 3.15 payment of long-term care expenses or long-term care insurance premiums, or death
 3.16 of the participant is subject to a ten percent penalty on the amount withdrawn. The
 3.17 commissioner shall collect the penalty.

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

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

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

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

3.26 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue
 3.27 Code, except the portion of the exempt-interest dividends derived from interest income
 3.28 on obligations of the state of Minnesota or its political or governmental subdivisions,
 3.29 municipalities, governmental agencies or instrumentalities, but only if the portion of the
 3.30 exempt-interest dividends from such Minnesota sources paid to all shareholders represents
 3.31 95 percent or more of the exempt-interest dividends that are paid by the regulated
 3.32 investment company as defined in section 851(a) of the Internal Revenue Code, or the
 3.33 fund of the regulated investment company as defined in section 851(g) of the Internal
 3.34 Revenue Code, making the payment; and

4.1 (iii) for the purposes of items (i) and (ii), interest on obligations of an Indian tribal
4.2 government described in section 7871(c) of the Internal Revenue Code shall be treated as
4.3 interest income on obligations of the state in which the tribe is located;

4.4 (2) the amount of income or sales and use taxes paid or accrued within the taxable
4.5 year under this chapter and the amount of taxes based on net income paid or sales and use
4.6 taxes paid to any other state or to any province or territory of Canada, to the extent allowed
4.7 as a deduction under section 63(d) of the Internal Revenue Code, but the addition may not
4.8 be more than the amount by which the itemized deductions as allowed under section 63(d)
4.9 of the Internal Revenue Code exceeds the amount of the standard deduction as defined
4.10 in section 63(c) of the Internal Revenue Code. For the purpose of this paragraph, the
4.11 disallowance of itemized deductions under section 68 of the Internal Revenue Code of
4.12 1986, income or sales and use tax is the last itemized deduction disallowed;

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

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

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

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

4.26 (7) 80 percent of the depreciation deduction allowed under section 168(k) of the
4.27 Internal Revenue Code. For purposes of this clause, if the taxpayer has an activity that
4.28 in the taxable year generates a deduction for depreciation under section 168(k) and the
4.29 activity generates a loss for the taxable year that the taxpayer is not allowed to claim for
4.30 the taxable year, "the depreciation allowed under section 168(k)" for the taxable year is
4.31 limited to excess of the depreciation claimed by the activity under section 168(k) over the
4.32 amount of the loss from the activity that is not allowed in the taxable year. In succeeding
4.33 taxable years when the losses not allowed in the taxable year are allowed, the depreciation
4.34 under section 168(k) is allowed;

5.1 (8) 80 percent of the amount by which the deduction allowed by section 179 of the
 5.2 Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal
 5.3 Revenue Code of 1986, as amended through December 31, 2003;

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

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

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

5.9 (12) for taxable years beginning after December 31, 2006, and before January 1,
 5.10 2008, the amount deducted for qualified tuition and related expenses under section 222 of
 5.11 the Internal Revenue Code, to the extent deducted from gross income; ~~and~~

5.12 (13) for taxable years beginning after December 31, 2006, and before January 1,
 5.13 2008, the amount deducted for certain expenses of elementary and secondary school
 5.14 teachers under section 62(a)(2)(D) of the Internal Revenue Code, to the extent deducted
 5.15 from gross income; and

5.16 (14) the amount withdrawn by a participant in the Minnesota long-term care
 5.17 savings plan by a person who is not a qualified individual or for any reason other than a
 5.18 transfer of funds to a spouse, payment of long-term care expenses or long-term care
 5.19 insurance premiums, or death of the participant, including withdrawals made by reason of
 5.20 cancellation of the participation agreement or termination of the plan.

5.21 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 5.22 December 31, 2009.

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

5.24 Subd. 19b. **Subtractions from federal taxable income.** For individuals, estates,
 5.25 and trusts, there shall be subtracted from federal taxable income:

5.26 (1) net interest income on obligations of any authority, commission, or
 5.27 instrumentality of the United States to the extent includable in taxable income for federal
 5.28 income tax purposes but exempt from state income tax under the laws of the United States;

5.29 (2) if included in federal taxable income, the amount of any overpayment of income
 5.30 tax to Minnesota or to any other state, for any previous taxable year, whether the amount
 5.31 is received as a refund or as a credit to another taxable year's income tax liability;

5.32 (3) the amount paid to others, less the amount used to claim the credit allowed under
 5.33 section 290.0674, not to exceed \$1,625 for each qualifying child in grades kindergarten
 5.34 to 6 and \$2,500 for each qualifying child in grades 7 to 12, for tuition, textbooks, and
 5.35 transportation of each qualifying child in attending an elementary or secondary school

6.1 situated in Minnesota, North Dakota, South Dakota, Iowa, or Wisconsin, wherein a
6.2 resident of this state may legally fulfill the state's compulsory attendance laws, which
6.3 is not operated for profit, and which adheres to the provisions of the Civil Rights Act
6.4 of 1964 and chapter 363A. For the purposes of this clause, "tuition" includes fees or
6.5 tuition as defined in section 290.0674, subdivision 1, clause (1). As used in this clause,
6.6 "textbooks" includes books and other instructional materials and equipment purchased
6.7 or leased for use in elementary and secondary schools in teaching only those subjects
6.8 legally and commonly taught in public elementary and secondary schools in this state.
6.9 Equipment expenses qualifying for deduction includes expenses as defined and limited in
6.10 section 290.0674, subdivision 1, clause (3). "Textbooks" does not include instructional
6.11 books and materials used in the teaching of religious tenets, doctrines, or worship, the
6.12 purpose of which is to instill such tenets, doctrines, or worship, nor does it include books
6.13 or materials for, or transportation to, extracurricular activities including sporting events,
6.14 musical or dramatic events, speech activities, driver's education, or similar programs. For
6.15 purposes of the subtraction provided by this clause, "qualifying child" has the meaning
6.16 given in section 32(c)(3) of the Internal Revenue Code;

6.17 (4) income as provided under section 290.0802;

6.18 (5) to the extent included in federal adjusted gross income, income realized on
6.19 disposition of property exempt from tax under section 290.491;

6.20 (6) to the extent not deducted or not deductible pursuant to section 408(d)(8)(E)
6.21 of the Internal Revenue Code in determining federal taxable income by an individual
6.22 who does not itemize deductions for federal income tax purposes for the taxable year, an
6.23 amount equal to 50 percent of the excess of charitable contributions over \$500 allowable
6.24 as a deduction for the taxable year under section 170(a) of the Internal Revenue Code and
6.25 under the provisions of Public Law 109-1;

6.26 (7) for taxable years beginning before January 1, 2008, the amount of the federal
6.27 small ethanol producer credit allowed under section 40(a)(3) of the Internal Revenue Code
6.28 which is included in gross income under section 87 of the Internal Revenue Code;

6.29 (8) for individuals who are allowed a federal foreign tax credit for taxes that do not
6.30 qualify for a credit under section 290.06, subdivision 22, an amount equal to the carryover
6.31 of subnational foreign taxes for the taxable year, but not to exceed the total subnational
6.32 foreign taxes reported in claiming the foreign tax credit. For purposes of this clause,
6.33 "federal foreign tax credit" means the credit allowed under section 27 of the Internal
6.34 Revenue Code, and "carryover of subnational foreign taxes" equals the carryover allowed
6.35 under section 904(c) of the Internal Revenue Code minus national level foreign taxes to
6.36 the extent they exceed the federal foreign tax credit;

7.1 (9) in each of the five tax years immediately following the tax year in which an
7.2 addition is required under subdivision 19a, clause (7), or 19c, clause (15), in the case
7.3 of a shareholder of a corporation that is an S corporation, an amount equal to one-fifth
7.4 of the delayed depreciation. For purposes of this clause, "delayed depreciation" means
7.5 the amount of the addition made by the taxpayer under subdivision 19a, clause (7), or
7.6 subdivision 19c, clause (15), in the case of a shareholder of an S corporation, minus the
7.7 positive value of any net operating loss under section 172 of the Internal Revenue Code
7.8 generated for the tax year of the addition. The resulting delayed depreciation cannot be
7.9 less than zero;

7.10 (10) job opportunity building zone income as provided under section 469.316;

7.11 (11) to the extent included in federal taxable income, the amount of compensation
7.12 paid to members of the Minnesota National Guard or other reserve components of the
7.13 United States military for active service performed in Minnesota, excluding compensation
7.14 for services performed under the Active Guard Reserve (AGR) program. For purposes of
7.15 this clause, "active service" means (i) state active service as defined in section 190.05,
7.16 subdivision 5a, clause (1); (ii) federally funded state active service as defined in section
7.17 190.05, subdivision 5b; or (iii) federal active service as defined in section 190.05,
7.18 subdivision 5c, but "active service" excludes service performed in accordance with section
7.19 190.08, subdivision 3;

7.20 (12) to the extent included in federal taxable income, the amount of compensation
7.21 paid to Minnesota residents who are members of the armed forces of the United States or
7.22 United Nations for active duty performed outside Minnesota under United States Code,
7.23 title 10, section 101(d); United States Code, title 32, section 101(12); or the authority of
7.24 the United Nations;

7.25 (13) an amount, not to exceed \$10,000, equal to qualified expenses related to a
7.26 qualified donor's donation, while living, of one or more of the qualified donor's organs
7.27 to another person for human organ transplantation. For purposes of this clause, "organ"
7.28 means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow;
7.29 "human organ transplantation" means the medical procedure by which transfer of a human
7.30 organ is made from the body of one person to the body of another person; "qualified
7.31 expenses" means unreimbursed expenses for both the individual and the qualified donor
7.32 for (i) travel, (ii) lodging, and (iii) lost wages net of sick pay, except that such expenses
7.33 may be subtracted under this clause only once; and "qualified donor" means the individual
7.34 or the individual's dependent, as defined in section 152 of the Internal Revenue Code. An
7.35 individual may claim the subtraction in this clause for each instance of organ donation for
7.36 transplantation during the taxable year in which the qualified expenses occur;

8.1 (14) in each of the five tax years immediately following the tax year in which an
 8.2 addition is required under subdivision 19a, clause (8), or 19c, clause (16), in the case of a
 8.3 shareholder of a corporation that is an S corporation, an amount equal to one-fifth of the
 8.4 addition made by the taxpayer under subdivision 19a, clause (8), or 19c, clause (16), in the
 8.5 case of a shareholder of a corporation that is an S corporation, minus the positive value of
 8.6 any net operating loss under section 172 of the Internal Revenue Code generated for the
 8.7 tax year of the addition. If the net operating loss exceeds the addition for the tax year, a
 8.8 subtraction is not allowed under this clause;

8.9 (15) to the extent included in federal taxable income, compensation paid to a service
 8.10 member as defined in United States Code, title 10, section 101(a)(5), for military service
 8.11 as defined in the Servicemembers Civil Relief Act, Public Law 108-189, section 101(2);

8.12 (16) international economic development zone income as provided under section
 8.13 469.325; ~~and~~

8.14 (17) to the extent included in federal taxable income, the amount of national service
 8.15 educational awards received from the National Service Trust under United States Code,
 8.16 title 42, sections 12601 to 12604, for service in an approved Americorps National Service
 8.17 program; and

8.18 (18) to the extent not deducted in determining federal taxable income, an amount
 8.19 equal to contributions made to the Minnesota long-term care savings plan under section
 8.20 16A.726, up to a maximum of \$4,000 for married individuals filing joint returns and
 8.21 \$2,000 for any other return, and any investment earnings made as a participant in the
 8.22 Minnesota long-term care savings plan.

8.23 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
 8.24 December 31, 2009.

8.25 Sec. 4. Minnesota Statutes 2008, section 290.091, subdivision 2, is amended to read:

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

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

8.30 (1) the taxpayer's federal alternative minimum taxable income as defined in section
 8.31 55(b)(2) of the Internal Revenue Code;

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

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

- 9.1 (ii) the medical expense deduction;
- 9.2 (iii) the casualty, theft, and disaster loss deduction; and
- 9.3 (iv) the impairment-related work expenses of a disabled person;
- 9.4 (3) for depletion allowances computed under section 613A(c) of the Internal
- 9.5 Revenue Code, with respect to each property (as defined in section 614 of the Internal
- 9.6 Revenue Code), to the extent not included in federal alternative minimum taxable income,
- 9.7 the excess of the deduction for depletion allowable under section 611 of the Internal
- 9.8 Revenue Code for the taxable year over the adjusted basis of the property at the end of the
- 9.9 taxable year (determined without regard to the depletion deduction for the taxable year);
- 9.10 (4) to the extent not included in federal alternative minimum taxable income, the
- 9.11 amount of the tax preference for intangible drilling cost under section 57(a)(2) of the
- 9.12 Internal Revenue Code determined without regard to subparagraph (E);
- 9.13 (5) to the extent not included in federal alternative minimum taxable income, the
- 9.14 amount of interest income as provided by section 290.01, subdivision 19a, clause (1); and
- 9.15 (6) the amount of addition required by section 290.01, subdivision 19a, clauses
- 9.16 (7) to (9), (12), and (13);
- 9.17 less the sum of the amounts determined under the following:
- 9.18 (1) interest income as defined in section 290.01, subdivision 19b, clause (1);
- 9.19 (2) an overpayment of state income tax as provided by section 290.01, subdivision
- 9.20 19b, clause (2), to the extent included in federal alternative minimum taxable income;
- 9.21 (3) the amount of investment interest paid or accrued within the taxable year on
- 9.22 indebtedness to the extent that the amount does not exceed net investment income, as
- 9.23 defined in section 163(d)(4) of the Internal Revenue Code. Interest does not include
- 9.24 amounts deducted in computing federal adjusted gross income; and
- 9.25 (4) amounts subtracted from federal taxable income as provided by section 290.01,
- 9.26 subdivision 19b, clauses (6) ~~and~~, (9) to (16), and (18).
- 9.27 In the case of an estate or trust, alternative minimum taxable income must be
- 9.28 computed as provided in section 59(c) of the Internal Revenue Code.
- 9.29 (b) "Investment interest" means investment interest as defined in section 163(d)(3)
- 9.30 of the Internal Revenue Code.
- 9.31 (c) "Tentative minimum tax" equals 6.4 percent of alternative minimum taxable
- 9.32 income after subtracting the exemption amount determined under subdivision 3.
- 9.33 (d) "Regular tax" means the tax that would be imposed under this chapter (without
- 9.34 regard to this section and section 290.032), reduced by the sum of the nonrefundable
- 9.35 credits allowed under this chapter.
- 9.36 (e) "Net minimum tax" means the minimum tax imposed by this section.

- 10.1 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
- 10.2 December 31, 2009.