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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE NO. 445

February 2, 2009
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The bill was read for the first time and referred to the Committee on Taxes

A bill for an act

relating to taxation; corporate franchise tax; allowing a five-year tax exemption for certain new facilities and expansions; amending Minnesota Statutes 2008, sections 290.01, subdivision 29; 290.0921, subdivision 3; 290.0922, subdivisions 2, 3; proposing coding for new law in Minnesota Statutes, chapter 116J.

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

Section 1. **[116J.8751] TAX EXEMPTION FOR NEW AND EXPANDING BUSINESSES.**

Subdivision 1. **Definitions.** (a) As used in the section, the following terms have the meanings given.

(b) "Project" means any revenue-producing enterprise, or any combination of two or more of these enterprises, if the project is conducted by a qualifying business.

(c) "Project percentage" means the following fraction reduced to a percentage for an approved project:

(1) the numerator of the fraction is:

(i) the ratio of the taxpayer's property factor under section 290.191 attributable to the project for the taxable year over the property factor numerator determined under section 290.191, plus

(ii) the ratio of the taxpayer's project payroll factor under paragraph (d) over the payroll factor numerator determined under section 290.191; and

(2) the denominator of the fraction is two.

When calculating the project percentage for a business that is part of a unitary business as defined under section 290.17, subdivision 4, the denominator of the payroll and property factors is the Minnesota payroll and property of the unitary business as reported on the combined report under section 290.17, subdivision 4, paragraph (j).

(d) "Project payroll factor" is that portion of the payroll factor under section 290.191 attributable to wages or salaries paid to individuals employed as a result of the project.

(e) "Qualifying business" means a corporation or other entity subject to tax under section 290.02 that either:

(1) through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth; or

(2) operates tourism-related businesses and activities, including recreation, historical and cultural events, guide services, and unique lodging and food services that serve as destination attractions.

(f) "Relocates" means that the trade or business:

(1) ceases one or more operations or functions at another location in Minnesota and begins performing substantially the same operations or functions in connection with the eligible project; or

(2) reduces employment at another location in Minnesota during a period starting one year before and ending one year after it begins operation of the project and its employees in the project are engaged in the same line of business as the employees at the location where it reduced employment; but excludes

(3) an expansion by a business that establishes a new facility that does not replace or supplant an existing operation or employment, in whole or in part.

"Trade or business" includes any business entity that is substantially similar in operation or ownership to the business entity seeking to be a qualified business under this section.

(g) "Relocation payroll percentage" is a fraction, the numerator of which is the project payroll of the business for the taxable year minus the payroll from the relocated operations in the last full year of operations prior to the relocation, and the denominator of which is the project payroll of the business for the taxable year. The relocation payroll percentage of a business that is not a relocating business is 100 percent.

Subd. 2. **Application for tax exemption.** Upon application by a project operator to the commissioner, the net income of a project may be exempt from corporate franchise tax for a period not exceeding five years from commencement of project operations. The application for the exemption must be reviewed as to the eligibility of the project by the commissioner who shall determine whether the granting of the exemption is in the best interest of the people of Minnesota and, if the commissioner so determines, shall approve the exemption. A qualified business is eligible only if it either is a new business or is an existing business that is constructing, purchasing or leasing additional facilities in Minnesota, and is employing ... or more additional employees in Minnesota. The commissioner shall, after making its determination, enter a business subsidy agreement with the applicant and after doing so shall certify the findings to the commissioner of revenue.

Subd. 3. **Notice to competitors.** The project operator shall provide notice to competitors in the manner prescribed by the commissioner.

Subd. 4. **Calculation of exemption.** (a) A qualified business is exempt from taxation on its income attributable to an eligible project approved by the commissioner. The exemption applies to the tax under section 290.02, the alternative minimum tax under section 290.0921, and the minimum fee under section 290.0922, on the portion of its income attributable to the eligible project. This exemption is determined as follows:

(1) for purposes of the tax imposed under section 290.02, by multiplying its taxable net income by its project percentage and by its relocation payroll percentage and subtracting the result in determining taxable income;

(2) for purposes of the alternative minimum tax under section 290.0921, by multiplying its alternative minimum taxable income by its project percentage and by its relocation payroll percentage and reducing alternative minimum taxable income by this amount; and

(3) for purposes of the minimum fee under section 290.0922, by excluding project property and payroll from the computations of the fee or by exempting the entity under section 290.0922, subdivision 2, clause (9).

(b) No subtraction is allowed under this section in excess of 20 percent of the sum of the corporation's project payroll and the adjusted basis of the property when the property is first used in the project by the corporation.

EFFECTIVE DATE. This section is effective July 1, 2009, and applies to taxable years beginning after December 31, 2008.

Sec. 2. Minnesota Statutes 2008, 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;

(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~~.~~; and

(vi) the exemption for projects approved under section 116J.8751.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2008.

Sec. 3. Minnesota Statutes 2008, section 290.0921, subdivision 3, is amended to read:

Subd. 3. **Alternative minimum taxable income.** "Alternative minimum taxable income" is Minnesota net income as defined in section 290.01, subdivision 19, and includes the adjustments and tax preference items in sections 56, 57, 58, and 59(d), (e), (f), and (h) of the Internal Revenue Code. If a corporation files a separate company Minnesota tax return, the minimum tax must be computed on a separate company basis. If a corporation is part of a tax group filing a unitary return, the minimum tax must be computed on a unitary basis. The following adjustments must be made.

(1) For purposes of the depreciation adjustments under section 56(a)(1) and 56(g)(4)(A) of the Internal Revenue Code, the basis for depreciable property placed in service in a taxable year beginning before January 1, 1990, is the adjusted basis for federal income tax purposes, including any modification made in a taxable year under section 290.01, subdivision 19e, or Minnesota Statutes 1986, section 290.09, subdivision 7, paragraph (c).

For taxable years beginning after December 31, 2000, the amount of any remaining modification made under section 290.01, subdivision 19e, or Minnesota Statutes 1986, section 290.09, subdivision 7, paragraph (c), not previously deducted is a depreciation allowance in the first taxable year after December 31, 2000.

(2) The portion of the depreciation deduction allowed for federal income tax purposes under section 168(k) of the Internal Revenue Code that is required as an addition under section 290.01, subdivision 19c, clause (15), is disallowed in determining alternative minimum taxable income.

(3) The subtraction for depreciation allowed under section 290.01, subdivision 19d, clause (18), is allowed as a depreciation deduction in determining alternative minimum taxable income.

(4) The alternative tax net operating loss deduction under sections 56(a)(4) and 56(d) of the Internal Revenue Code does not apply.

(5) The special rule for certain dividends under section 56(g)(4)(C)(ii) of the Internal Revenue Code does not apply.

(6) The special rule for dividends from section 936 companies under section 56(g)(4)(C)(iii) does not apply.

(7) The tax preference for depletion under section 57(a)(1) of the Internal Revenue Code does not apply.

(8) The tax preference for intangible drilling costs under section 57(a)(2) of the Internal Revenue Code must be calculated without regard to subparagraph (E) and the subtraction under section 290.01, subdivision 19d, clause (4).

(9) The tax preference for tax exempt interest under section 57(a)(5) of the Internal Revenue Code does not apply.

(10) The tax preference for charitable contributions of appreciated property under section 57(a)(6) of the Internal Revenue Code does not apply.

(11) For purposes of calculating the tax preference for accelerated depreciation or amortization on certain property placed in service before January 1, 1987, under section 57(a)(7) of the Internal Revenue Code, the deduction allowable for the taxable year is the deduction allowed under section 290.01, subdivision 19e.

For taxable years beginning after December 31, 2000, the amount of any remaining modification made under section 290.01, subdivision 19e, not previously deducted is a depreciation or amortization allowance in the first taxable year after December 31, 2004.

(12) For purposes of calculating the adjustment for adjusted current earnings in section 56(g) of the Internal Revenue Code, the term "alternative minimum taxable income" as it is used in section 56(g) of the Internal Revenue Code, means alternative minimum taxable income as defined in this subdivision, determined without regard to the adjustment for adjusted current earnings in section 56(g) of the Internal Revenue Code.

(13) For purposes of determining the amount of adjusted current earnings under section 56(g)(3) of the Internal Revenue Code, no adjustment shall be made under section 56(g)(4) of the Internal Revenue Code with respect to (i) the amount of foreign dividend gross-up subtracted as provided in section 290.01, subdivision 19d, clause (1), (ii) the amount of refunds of income, excise, or franchise taxes subtracted as provided in section 290.01, subdivision 19d, clause (9), or (iii) the amount of royalties, fees or other like income subtracted as provided in section 290.01, subdivision 19d, clause (10).

(14) Alternative minimum taxable income excludes the income from operating in a job opportunity building zone as provided under section 469.317.

(15) Alternative minimum taxable income excludes the income from operating in a biotechnology and health sciences industry zone as provided under section 469.337.

(16) Alternative minimum taxable income excludes the income from operating in an international economic development zone as provided under section 469.326.

(17) Alternative minimum taxable income excludes the income attributable to an approved project under section 116J.8751.

Items of tax preference must not be reduced below zero as a result of the modifications in this subdivision.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2008.

Sec. 4. Minnesota Statutes 2008, section 290.0922, subdivision 2, is amended to read:

Subd. 2. **Exemptions.** The following entities are exempt from the tax imposed by this section:

(1) corporations exempt from tax under section 290.05;

(2) real estate investment trusts;

(3) regulated investment companies or a fund thereof; and

(4) entities having a valid election in effect under section 860D(b) of the Internal Revenue Code;

(5) town and farmers' mutual insurance companies;

(6) cooperatives organized under chapter 308A or 308B that provide housing exclusively to persons age 55 and over and are classified as homesteads under section 273.124, subdivision 3;

(7) an entity, if for the taxable year all of its property is located in a job opportunity building zone designated under section 469.314 and all of its payroll is a job opportunity building zone payroll under section 469.310; ~~and~~

(8) an entity, if for the taxable year all of its property is located in an international economic development zone designated under section 469.322, and all of its payroll is international economic development zone payroll under section 469.321. The exemption under this clause applies to taxable years beginning during the duration of the international economic development zone~~.~~; and

(9) an entity, if for the taxable year its project percentage under section 116J.8751 is 100 percent.

Entities not specifically exempted by this subdivision are subject to tax under this section, notwithstanding section 290.05.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2008.

Sec. 5. Minnesota Statutes 2008, section 290.0922, subdivision 3, is amended to read:

Subd. 3. **Definitions.** (a) "Minnesota sales or receipts" means the total sales apportioned to Minnesota pursuant to section 290.191, subdivision 5, the total receipts attributed to Minnesota pursuant to section 290.191, subdivisions 6 to 8, and/or the total sales or receipts apportioned or attributed to Minnesota pursuant to any other apportionment formula applicable to the taxpayer.

(b) "Minnesota property" means total Minnesota tangible property as provided in section 290.191, subdivisions 9 to 11, any other tangible property located in Minnesota, but does not include: (1) property located in a job opportunity building zone designated under section 469.314, (2) property of a qualified business located in a biotechnology and health sciences industry zone designated under section 469.334, ~~or~~ (3) for taxable years beginning during the duration of the zone, property of a qualified business located in the international economic development zone designated under section 469.322, or (4) property attributable to a project approved under section 116J.8751. Intangible property shall not be included in Minnesota property for purposes of this section. Taxpayers who do not utilize tangible property to apportion income shall nevertheless include Minnesota property for purposes of this section. On a return for a short taxable year, the amount of Minnesota property owned, as determined under section 290.191, shall be included in Minnesota property based on a fraction in which the numerator is the number of days in the short taxable year and the denominator is 365.

(c) "Minnesota payrolls" means total Minnesota payrolls as provided in section 290.191, subdivision 12, but does not include: (1) job opportunity building zone payrolls under section 469.310, subdivision 8, (2) biotechnology and health sciences industry zone payrolls under section 469.330, subdivision 8, ~~or~~ (3) for taxable years beginning during the duration of the zone, international economic development zone payrolls under section 469.321, subdivision 9, or (4) payroll attributable to a project approved under section 116J.8751. Taxpayers who do not utilize payrolls to apportion income shall nevertheless include Minnesota payrolls for purposes of this section.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2008.