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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **2704**

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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; conforming to changes made to the Internal Revenue Code;
1.3 disallowing the deduction of certain dividends; amending Minnesota Statutes
1.4 2008, section 290.21, subdivision 4; Minnesota Statutes 2009 Supplement,
1.5 sections 289A.02, subdivision 7; 290.01, subdivisions 19, 19b, 31; 290A.03,
1.6 subdivision 15; 291.005, subdivision 1.

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

1.8 Section 1. Minnesota Statutes 2009 Supplement, section 289A.02, subdivision 7,
1.9 is amended to read:

1.10 Subd. 7. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal
1.11 Revenue Code" means the Internal Revenue Code of 1986, as amended through ~~March 31,~~
1.12 2009 January 22, 2010.

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

1.16 Sec. 2. Minnesota Statutes 2009 Supplement, section 290.01, subdivision 19, is
1.17 amended to read:

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

2.1 In the case of a regulated investment company or a fund thereof, as defined in section
 2.2 851(a) or 851(g) of the Internal Revenue Code, federal taxable income means investment
 2.3 company taxable income as defined in section 852(b)(2) of the Internal Revenue Code,
 2.4 except that:

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

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

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

2.14 The net income of a real estate investment trust as defined and limited by section
 2.15 856(a), (b), and (c) of the Internal Revenue Code means the real estate investment trust
 2.16 taxable income as defined in section 857(b)(2) of the Internal Revenue Code.

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

2.20 The Internal Revenue Code of 1986, as amended through ~~March 31, 2009~~ January
 2.21 22, 2010, 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 the day following final enactment.

2.26 Sec. 3. Minnesota Statutes 2009 Supplement, section 290.01, subdivision 19b, is
 2.27 amended to read:

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

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

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

3.1 (3) the amount paid to others, less the amount used to claim the credit allowed under
3.2 section 290.0674, not to exceed \$1,625 for each qualifying child in grades kindergarten
3.3 to 6 and \$2,500 for each qualifying child in grades 7 to 12, for tuition, textbooks, and
3.4 transportation of each qualifying child in attending an elementary or secondary school
3.5 situated in Minnesota, North Dakota, South Dakota, Iowa, or Wisconsin, wherein a
3.6 resident of this state may legally fulfill the state's compulsory attendance laws, which
3.7 is not operated for profit, and which adheres to the provisions of the Civil Rights Act
3.8 of 1964 and chapter 363A. For the purposes of this clause, "tuition" includes fees or
3.9 tuition as defined in section 290.0674, subdivision 1, clause (1). As used in this clause,
3.10 "textbooks" includes books and other instructional materials and equipment purchased
3.11 or leased for use in elementary and secondary schools in teaching only those subjects
3.12 legally and commonly taught in public elementary and secondary schools in this state.
3.13 Equipment expenses qualifying for deduction includes expenses as defined and limited in
3.14 section 290.0674, subdivision 1, clause (3). "Textbooks" does not include instructional
3.15 books and materials used in the teaching of religious tenets, doctrines, or worship, the
3.16 purpose of which is to instill such tenets, doctrines, or worship, nor does it include books
3.17 or materials for, or transportation to, extracurricular activities including sporting events,
3.18 musical or dramatic events, speech activities, driver's education, or similar programs. No
3.19 deduction is permitted for any expense the taxpayer incurred in using the taxpayer's or
3.20 the qualifying child's vehicle to provide such transportation for a qualifying child. For
3.21 purposes of the subtraction provided by this clause, "qualifying child" has the meaning
3.22 given in section 32(c)(3) of the Internal Revenue Code;

3.23 (4) income as provided under section 290.0802;

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

3.26 (6) to the extent not deducted or not deductible pursuant to section 408(d)(8)(E)
3.27 of the Internal Revenue Code in determining federal taxable income by an individual
3.28 who does not itemize deductions for federal income tax purposes for the taxable year, an
3.29 amount equal to 50 percent of the excess of charitable contributions over \$500 allowable
3.30 as a deduction for the taxable year under section 170(a) of the Internal Revenue Code ~~and~~,
3.31 under the provisions of Public Law 109-1, and under the provisions of Public Law 111-126;

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

3.35 (8) for individuals who are allowed a federal foreign tax credit for taxes that do not
3.36 qualify for a credit under section 290.06, subdivision 22, an amount equal to the carryover

4.1 of subnational foreign taxes for the taxable year, but not to exceed the total subnational
4.2 foreign taxes reported in claiming the foreign tax credit. For purposes of this clause,
4.3 "federal foreign tax credit" means the credit allowed under section 27 of the Internal
4.4 Revenue Code, and "carryover of subnational foreign taxes" equals the carryover allowed
4.5 under section 904(c) of the Internal Revenue Code minus national level foreign taxes to
4.6 the extent they exceed the federal foreign tax credit;

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

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

4.17 (11) to the extent included in federal taxable income, the amount of compensation
4.18 paid to members of the Minnesota National Guard or other reserve components of the
4.19 United States military for active service performed in Minnesota, excluding compensation
4.20 for services performed under the Active Guard Reserve (AGR) program. For purposes of
4.21 this clause, "active service" means (i) state active service as defined in section 190.05,
4.22 subdivision 5a, clause (1); (ii) federally funded state active service as defined in section
4.23 190.05, subdivision 5b; or (iii) federal active service as defined in section 190.05,
4.24 subdivision 5c, but "active service" excludes service performed in accordance with section
4.25 190.08, subdivision 3;

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

4.31 (13) an amount, not to exceed \$10,000, equal to qualified expenses related to a
4.32 qualified donor's donation, while living, of one or more of the qualified donor's organs
4.33 to another person for human organ transplantation. For purposes of this clause, "organ"
4.34 means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow;
4.35 "human organ transplantation" means the medical procedure by which transfer of a human
4.36 organ is made from the body of one person to the body of another person; "qualified

5.1 expenses" means unreimbursed expenses for both the individual and the qualified donor
 5.2 for (i) travel, (ii) lodging, and (iii) lost wages net of sick pay, except that such expenses
 5.3 may be subtracted under this clause only once; and "qualified donor" means the individual
 5.4 or the individual's dependent, as defined in section 152 of the Internal Revenue Code. An
 5.5 individual may claim the subtraction in this clause for each instance of organ donation for
 5.6 transplantation during the taxable year in which the qualified expenses occur;

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

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

5.18 (16) international economic development zone income as provided under section
 5.19 469.325;

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

5.24 (18) to the extent included in federal taxable income, discharge of indebtedness
 5.25 income resulting from reacquisition of business indebtedness included in federal taxable
 5.26 income under section 108(i) of the Internal Revenue Code. This subtraction applies only
 5.27 to the extent that the income was included in net income in a prior year as a result of the
 5.28 addition under section 290.01, subdivision 19a, clause (16).

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

5.31 Sec. 4. Minnesota Statutes 2009 Supplement, section 290.01, subdivision 31, is
 5.32 amended to read:

5.33 Subd. 31. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal
 5.34 Revenue Code" means the Internal Revenue Code of 1986, as amended through ~~March 31,~~
 5.35 ~~2009~~ January 22, 2010. Internal Revenue Code also includes any uncodified provision in

6.1 federal law that relates to provisions of the Internal Revenue Code that are incorporated
6.2 into Minnesota law.

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

6.6 Sec. 5. Minnesota Statutes 2008, section 290.21, subdivision 4, is amended to read:

6.7 Subd. 4. **Dividends received from another corporation.** (a)(1) Eighty percent
6.8 of dividends received by a corporation during the taxable year from another corporation,
6.9 in which the recipient owns 20 percent or more of the stock, by vote and value, not
6.10 including stock described in section 1504(a)(4) of the Internal Revenue Code when the
6.11 corporate stock with respect to which dividends are paid does not constitute the stock in
6.12 trade of the taxpayer or would not be included in the inventory of the taxpayer, or does not
6.13 constitute property held by the taxpayer primarily for sale to customers in the ordinary
6.14 course of the taxpayer's trade or business, or when the trade or business of the taxpayer
6.15 does not consist principally of the holding of the stocks and the collection of the income
6.16 and gains therefrom; and

6.17 (2)(i) the remaining 20 percent of dividends if the dividends received are the stock in
6.18 an affiliated company transferred in an overall plan of reorganization and the dividend
6.19 is eliminated in consolidation under Treasury Department Regulation 1.1502-14(a), as
6.20 amended through December 31, 1989;

6.21 (ii) the remaining 20 percent of dividends if the dividends are received from a
6.22 corporation which is subject to tax under section 290.36 and which is a member of an
6.23 affiliated group of corporations as defined by the Internal Revenue Code and the dividend
6.24 is eliminated in consolidation under Treasury Department Regulation 1.1502-14(a), as
6.25 amended through December 31, 1989, or is deducted under an election under section
6.26 243(b) of the Internal Revenue Code; or

6.27 (iii) the remaining 20 percent of the dividends if the dividends are received from a
6.28 property and casualty insurer as defined under section 60A.60, subdivision 8, which is a
6.29 member of an affiliated group of corporations as defined by the Internal Revenue Code
6.30 and either: (A) the dividend is eliminated in consolidation under Treasury Regulation
6.31 1.1502-14(a), as amended through December 31, 1989; or (B) the dividend is deducted
6.32 under an election under section 243(b) of the Internal Revenue Code.

6.33 (b) Seventy percent of dividends received by a corporation during the taxable year
6.34 from another corporation in which the recipient owns less than 20 percent of the stock,
6.35 by vote or value, not including stock described in section 1504(a)(4) of the Internal

7.1 Revenue Code when the corporate stock with respect to which dividends are paid does not
7.2 constitute the stock in trade of the taxpayer, or does not constitute property held by the
7.3 taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or
7.4 business, or when the trade or business of the taxpayer does not consist principally of the
7.5 holding of the stocks and the collection of income and gain therefrom.

7.6 (c) The dividend deduction provided in this subdivision shall be allowed only with
7.7 respect to dividends that are included in a corporation's Minnesota taxable net income
7.8 for the taxable year.

7.9 The dividend deduction provided in this subdivision does not apply to a dividend
7.10 from a corporation which, for the taxable year of the corporation in which the distribution
7.11 is made or for the next preceding taxable year of the corporation, is a corporation exempt
7.12 from tax under section 501 of the Internal Revenue Code.

7.13 The dividend deduction provided in this subdivision applies to the amount of
7.14 regulated investment company dividends only to the extent determined under section
7.15 854(b) of the Internal Revenue Code.

7.16 The dividend deduction provided in this subdivision shall not be allowed with
7.17 respect to any dividend for which a deduction is not allowed under the provisions of
7.18 section 246(c) of the Internal Revenue Code.

7.19 (d) If dividends received by a corporation that does not have nexus with Minnesota
7.20 under the provisions of Public Law 86-272 are included as income on the return of
7.21 an affiliated corporation permitted or required to file a combined report under section
7.22 290.17, subdivision 4, or 290.34, subdivision 2, then for purposes of this subdivision the
7.23 determination as to whether the trade or business of the corporation consists principally
7.24 of the holding of stocks and the collection of income and gains therefrom shall be made
7.25 with reference to the trade or business of the affiliated corporation having a nexus with
7.26 Minnesota.

7.27 (e) The deduction provided by this subdivision does not apply if the dividends are
7.28 paid by a FSC as defined in section 922 of the Internal Revenue Code.

7.29 (f) If one or more of the members of the unitary group whose income is included on
7.30 the combined report received a dividend, the deduction under this subdivision for each
7.31 member of the unitary business required to file a return under this chapter is the product
7.32 of: (1) 100 percent of the dividends received by members of the group; (2) the percentage
7.33 allowed pursuant to paragraph (a) or (b); and (3) the percentage of the taxpayer's business
7.34 income apportionable to this state for the taxable year under section 290.191 or 290.20.

8.1 (g) The deduction provided by this subdivision does not apply to dividends received
8.2 from a real estate investment trust, if the dividends are not considered to be dividends
8.3 under section 243(d)(3) and section 857(c) of the Internal Revenue Code.

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

8.6 Sec. 6. Minnesota Statutes 2009 Supplement, section 290A.03, subdivision 15, is
8.7 amended to read:

8.8 Subd. 15. **Internal Revenue Code.** "Internal Revenue Code" means the Internal
8.9 Revenue Code of 1986, as amended through ~~March 31, 2009~~ January 22, 2010.

8.10 **EFFECTIVE DATE.** This section is effective for property tax refunds based on
8.11 property taxes payable after December 31, 2010, and rent paid after December 31, 2009,
8.12 and thereafter.

8.13 Sec. 7. Minnesota Statutes 2009 Supplement, section 291.005, subdivision 1, is
8.14 amended to read:

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

8.17 (1) "Commissioner" means the commissioner of revenue or any person to whom the
8.18 commissioner has delegated functions under this chapter.

8.19 (2) "Federal gross estate" means the gross estate of a decedent as valued and
8.20 otherwise determined for federal estate tax purposes by federal taxing authorities pursuant
8.21 to the provisions of the Internal Revenue Code.

8.22 (3) "Internal Revenue Code" means the United States Internal Revenue Code of
8.23 1986, as amended through ~~March 31, 2009~~ January 22, 2010.

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

8.27 (5) "Minnesota gross estate" means the federal gross estate of a decedent after (a)
8.28 excluding therefrom any property included therein which has its situs outside Minnesota,
8.29 and (b) including therein any property omitted from the federal gross estate which is
8.30 includable therein, has its situs in Minnesota, and was not disclosed to federal taxing
8.31 authorities.

8.32 (6) "Nonresident decedent" means an individual whose domicile at the time of
8.33 death was not in Minnesota.

9.1 (7) "Personal representative" means the executor, administrator or other person
9.2 appointed by the court to administer and dispose of the property of the decedent. If there
9.3 is no executor, administrator or other person appointed, qualified, and acting within this
9.4 state, then any person in actual or constructive possession of any property having a situs in
9.5 this state which is included in the federal gross estate of the decedent shall be deemed
9.6 to be a personal representative to the extent of the property and the Minnesota estate tax
9.7 due with respect to the property.

9.8 (8) "Resident decedent" means an individual whose domicile at the time of death
9.9 was in Minnesota.

9.10 (9) "Situs of property" means, with respect to real property, the state or country in
9.11 which it is located; with respect to tangible personal property, the state or country in which
9.12 it was normally kept or located at the time of the decedent's death; and with respect to
9.13 intangible personal property, the state or country in which the decedent was domiciled
9.14 at death.

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