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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1068

02/13/2017 Authored by Bernardy, Omar, Marquart, Davnie, Loeffler and others
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; individual income; modifying the dependent care credit;
1.3 amending Minnesota Statutes 2016, sections 290.067, subdivisions 1, 2, 2b, 3;
1.4 290.0674, by adding a subdivision; repealing Minnesota Statutes 2016, section
1.5 290.067, subdivision 2a.

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

1.7 Section 1. Minnesota Statutes 2016, section 290.067, subdivision 1, is amended to read:

1.8 Subdivision 1. Amount of credit. (a) A taxpayer may take as a credit against the tax
1.9 due from the taxpayer and a spouse, if any, under this chapter an amount equal to the sum
1.10 of dependent care credit for which the taxpayer is eligible pursuant to the provisions of
1.11 section 21 of the Internal Revenue Code subject to the limitations provided in subdivision
1.12 2 except that credits calculated under this paragraph and paragraphs (b), (d), and (e). In
1.13 determining whether the child qualified as a dependent expenses were paid to care for a
1.14 qualifying individual, income received as a Minnesota family investment program grant or
1.15 allowance to or on behalf of the child qualifying individual must not be taken into account
1.16 in determining whether the child qualifying individual received more than half of the child's
1.17 individual's support from the taxpayer, and the provisions of section 32(b)(1)(D) of the
1.18 Internal Revenue Code do not apply.

1.19 (b) If a child who has not attained the age of six years at the close of the taxable year is
1.20 cared for at a licensed family day care home operated by the child's parent, the taxpayer is
1.21 deemed to have paid employment-related expenses. A taxpayer who incurs actual
1.22 employment-related expenses may take as a credit against the tax imposed under this chapter
1.23 an amount equal to the dependent care credit for which the taxpayer is eligible under section
1.24 21 of the Internal Revenue Code.

2.1 (c) A taxpayer who elects to claim a credit under paragraph (d) or (e) may claim a credit
 2.2 under paragraph (b) only for employment-related expenses paid to care for qualifying
 2.3 individuals other than a child for whom deemed expenses were used to claim the credit
 2.4 under paragraph (d) or (e).

2.5 (d) In lieu of the credit under paragraph (b), a taxpayer who operates a licensed family
 2.6 day care home may elect to claim as a credit against the tax imposed under this chapter an
 2.7 amount equal to the dependent care credit for which the taxpayer is eligible under section
 2.8 21 of the Internal Revenue Code, calculated using deemed expenses rather than actual
 2.9 expenses paid. If the child is 16 months old or younger at the close of the taxable year, the
 2.10 amount of deemed expenses deemed to have been paid equals are equal to the maximum
 2.11 limit amount of employment-related expenses incurred during the taxable year that may be
 2.12 taken into account for one qualified qualifying individual under section 21(c) and (d) of the
 2.13 Internal Revenue Code. If the child is older than 16 months of age but has not attained the
 2.14 age of six years at the close of the taxable year, the amount of expenses deemed to have
 2.15 been paid equals deemed expenses are equal to the amount the licensee would charge for
 2.16 the care of a child of the same age for the same number of hours of care. If the child has
 2.17 attained the age of six at the close of the taxable year, deemed expenses are zero.

2.18 (e) If a (e) In lieu of the credit under paragraph (b), a married couple may elect to claim
 2.19 a credit against the tax imposed under this chapter as computed under paragraph (f), if the
 2.20 married couple:

2.21 (1) has a child who has not attained the age of one year at the close of the taxable year;

2.22 (2) files a joint tax return for the taxable year; and

2.23 (3) does not participate in a dependent care assistance program as defined in section 129
 2.24 of the Internal Revenue Code, ~~in lieu of the actual employment related expenses paid for~~
 2.25 ~~that child under paragraph (a) or the deemed amount under paragraph (b), the lesser of (i)~~
 2.26 ~~the combined earned income of the couple or (ii) the amount of the maximum limit for one~~
 2.27 ~~qualified individual under section 21(c) and (d) of the Internal Revenue Code will be deemed~~
 2.28 ~~to be the employment related expense paid for that child. The earned income limitation of~~
 2.29 ~~section 21(d) of the Internal Revenue Code shall not apply to this deemed amount. These~~
 2.30 ~~deemed amounts apply regardless of whether any employment related expenses have been~~
 2.31 ~~paid; and~~

2.32 (4) does not operate a licensed family day care center home.

2.33 (f) A married couple meeting the requirements of paragraph (e) is allowed a credit against
 2.34 the tax due under this chapter equal to the dependent care credit for which the couple is

3.1 eligible under section 21 of the Internal Revenue Code, calculated using deemed expenses
 3.2 rather than actual employment-related expenses paid. For purposes of this paragraph, deemed
 3.3 expenses are the lesser of (1) the combined earned income of the couple, or (2) the maximum
 3.4 amount of employment-related expenses incurred during the taxable year that may be taken
 3.5 into account for one qualifying individual under section 21(c) and (d) of the Internal Revenue
 3.6 Code, or for two qualifying individuals for a taxpayer with two children who have not
 3.7 attained the age of one. The earned income limitation in section 21(d) of the Internal Revenue
 3.8 Code does not apply to this deemed amount. The deemed amount applies regardless of
 3.9 whether the taxpayer has paid any employment-related expenses.

3.10 ~~(d)~~ (g) If the taxpayer is not required and does not file a federal individual income tax
 3.11 return for the tax year, or if the taxpayer does file a federal return but does not claim a
 3.12 federal dependent care credit, no credit is allowed for any amount paid to any person unless:

3.13 (1) the name, address, and taxpayer identification number of the person are included on
 3.14 the return claiming the credit; or

3.15 (2) if the person is an organization described in section 501(c)(3) of the Internal Revenue
 3.16 Code and exempt from tax under section 501(a) of the Internal Revenue Code, the name
 3.17 and address of the person are included on the return claiming the credit.

3.18 In the case of a failure to provide the information required under the preceding sentence,
 3.19 the preceding sentence does not apply if it is shown that the taxpayer exercised due diligence
 3.20 in attempting to provide the information required.

3.21 ~~(e)~~ (h) In the case of a nonresident, part-year resident, or a person who has earned income
 3.22 not subject to tax under this chapter including earned income excluded pursuant to section
 3.23 290.0132, subdivision 10, the credit determined under this section ~~21 of the Internal Revenue~~
 3.24 ~~Code~~ must be allocated based on the ratio by which the earned income of the claimant and
 3.25 the claimant's spouse from Minnesota sources bears to the total earned income of the claimant
 3.26 and the claimant's spouse.

3.27 ~~(f)~~ (i) For residents of Minnesota, the subtractions for military pay under section
 3.28 290.0132, subdivisions 11 and 12, are not considered "earned income not subject to tax
 3.29 under this chapter."

3.30 ~~(g)~~ (j) For residents of Minnesota, the exclusion of combat pay under section 112 of the
 3.31 Internal Revenue Code is not considered "earned income not subject to tax under this
 3.32 chapter."

4.1 (k) For purposes of this section, the terms "qualifying individual" and
 4.2 "employment-related expenses" have the meanings given in section 21 of the Internal
 4.3 Revenue Code.

4.4 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 4.5 31, 2016.

4.6 Sec. 2. Minnesota Statutes 2016, section 290.067, subdivision 2, is amended to read:

4.7 ~~Subd. 2. **Limitations.** The credit for expenses incurred for the care of each dependent~~
 4.8 ~~shall not exceed \$720 in any taxable year, and the total credit for all dependents of a claimant~~
 4.9 ~~shall not exceed \$1,440 in a taxable year. The maximum total credit shall be reduced~~
 4.10 ~~according to the amount of the income of the claimant and a spouse, if any, as follows:~~

4.11 ~~income up to \$18,040, \$720 maximum for one dependent, \$1,440 for all dependents;~~

4.12 ~~income over \$18,040, the maximum credit for one dependent shall be reduced by \$18~~
 4.13 ~~for every \$350 of additional income, \$36 for all dependents.~~

4.14 ~~The commissioner shall construct and make available to taxpayers tables showing the~~
 4.15 ~~amount of the credit at various levels of income and expenses. The tables shall follow the~~
 4.16 ~~schedule contained in this subdivision, except that the commissioner may graduate the~~
 4.17 ~~transitions between expenses and income brackets.~~

4.18 (a) The maximum credit under subdivision 1, paragraph (b), is:

4.19 (1) \$1,050 for a taxpayer with employment-related expenses for one qualifying individual;

4.20 (2) \$2,100 for a taxpayer with employment-related expenses for two or more qualifying
 4.21 individuals;

4.22 (3) \$1,050 for a taxpayer who elects to claim a credit under subdivision 1, paragraph

4.23 (d) or (e), if that credit is based on deemed expenses for one child; and

4.24 (4) \$0 for a taxpayer who elects to claim a credit under subdivision 1, paragraph (d) or
 4.25 (e), if that credit is based on deemed expenses for two or more children.

4.26 (b) The maximum credit under subdivision 1, paragraphs (d) and (e), is:

4.27 (1) \$720 for a taxpayer with deemed expenses for one child; and

4.28 (2) \$1,440 for a taxpayer with deemed expenses for two or more children.

4.29 (c) For a taxpayer who claims a credit under subdivision 1, paragraph (b), who has
 4.30 federal adjusted gross income, as defined in the Internal Revenue Code, in excess of \$77,000,
 4.31 the credit under subdivision 1, paragraph (b), is equal to the lesser of:

5.1 (1) the credit calculated under subdivision 1, paragraph (b); or

5.2 (2) \$600 minus five percent of federal adjusted gross income in excess of \$77,000 for
 5.3 a taxpayer with one qualifying individual, or \$1,200 minus five percent of federal adjusted
 5.4 gross income in excess of \$77,000 for a taxpayer with two or more qualifying individuals,
 5.5 but in no case is the credit less than zero.

5.6 (d) For a taxpayer who elects to claim the credit under subdivision 1, paragraph (d) or
 5.7 (e), with federal adjusted gross income, as defined in the Internal Revenue Code, in excess
 5.8 of \$25,000, the credit is equal to the lesser of:

5.9 (1) the credit calculated under subdivision 1, paragraph (d) or (e); or

5.10 (2) \$720 minus five percent of federal adjusted gross income in excess of \$25,000 for
 5.11 a taxpayer with one qualifying individual, or \$1,440 minus five percent of federal adjusted
 5.12 gross income in excess of \$25,000 for a taxpayer with two or more qualifying individuals,
 5.13 but in no case is the credit less than zero.

5.14 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 5.15 31, 2016.

5.16 Sec. 3. Minnesota Statutes 2016, section 290.067, subdivision 2b, is amended to read:

5.17 Subd. 2b. **Inflation adjustment.** The commissioner shall adjust the dollar amount of
 5.18 the income threshold at which the maximum credit begins to be reduced under subdivision
 5.19 2 by the percentage determined pursuant to the provisions of section 1(f) of the Internal
 5.20 Revenue Code, except that in section 1(f)(3)(B) the word "~~1999~~" "2016" shall be substituted
 5.21 for the word "1992." For ~~2004~~ 2018, the commissioner shall then determine the percent
 5.22 change from the 12 months ending on August 31, ~~1999~~ 2016, to the 12 months ending on
 5.23 August 31, ~~2000~~ 2017, and in each subsequent year, from the 12 months ending on August
 5.24 31, ~~1999~~ 2016, to the 12 months ending on August 31 of the year preceding the taxable
 5.25 year. The determination of the commissioner pursuant to this subdivision must not be
 5.26 considered a "rule" and is not subject to the Administrative Procedure Act contained in
 5.27 chapter 14. The threshold amount as adjusted must be rounded to the nearest \$10 amount.
 5.28 If the amount ends in \$5, the amount is rounded up to the nearest \$10 amount.

5.29 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 5.30 31, 2016.

6.1 Sec. 4. Minnesota Statutes 2016, section 290.067, subdivision 3, is amended to read:

6.2 Subd. 3. **Credit to be refundable.** If the amount of credit which a claimant would be
6.3 eligible to receive pursuant to this ~~subdivision~~ section exceeds the claimant's tax liability
6.4 under chapter 290, the excess amount of the credit shall be refunded to the claimant by the
6.5 commissioner ~~of revenue~~.

6.6 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
6.7 31, 2016.

6.8 Sec. 5. Minnesota Statutes 2016, section 290.0674, is amended by adding a subdivision
6.9 to read:

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

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

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

6.15 (i) all nontaxable income;

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

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

6.22 (iv) cash public assistance and relief;

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

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

6.30 (vii) workers' compensation;

6.31 (viii) nontaxable strike benefits;

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

7.4 (x) a lump-sum distribution under section 402(e)(3) of the Internal Revenue Code of
7.5 1986, as amended through December 31, 1995;

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

7.11 (xii) nontaxable scholarship or fellowship grants;

7.12 (xiii) the amount of deduction allowed under section 199 of the Internal Revenue Code;

7.13 (xiv) the amount of deduction allowed under section 220 or 223 of the Internal Revenue
7.14 Code;

7.15 (xv) the amount deducted for tuition expenses under section 222 of the Internal Revenue
7.16 Code; and

7.17 (xvi) the amount deducted for certain expenses of elementary and secondary school
7.18 teachers under section 62(a)(2)(D) of the Internal Revenue Code.

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

7.24 (b) "Income" does not include:

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

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

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

7.30 (4) relief granted under chapter 290A;

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

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

8.6 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
8.7 31, 2016.

8.8 Sec. 6. **REPEALER.**

8.9 Minnesota Statutes 2016, section 290.067, subdivision 2a, is repealed.

8.10 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
8.11 31, 2016.

290.067 DEPENDENT CARE CREDIT.

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

- (1) federal adjusted gross income as defined in section 62 of the Internal Revenue Code;
- and
- (2) the sum of the following amounts to the extent not included in clause (1):
 - (i) all nontaxable income;
 - (ii) the amount of a passive activity loss that is not disallowed as a result of section 469, paragraph (i) or (m) of the Internal Revenue Code and the amount of passive activity loss carryover allowed under section 469(b) of the Internal Revenue Code;
 - (iii) an amount equal to the total of any discharge of qualified farm indebtedness of a solvent individual excluded from gross income under section 108(g) of the Internal Revenue Code;
 - (iv) cash public assistance and relief;
 - (v) any pension or annuity (including railroad retirement benefits, all payments received under the federal Social Security Act, Supplemental Security Income, and veterans benefits), which was not exclusively funded by the claimant or spouse, or which was funded exclusively by the claimant or spouse and which funding payments were excluded from federal adjusted gross income in the years when the payments were made;
 - (vi) interest received from the federal or a state government or any instrumentality or political subdivision thereof;
 - (vii) workers' compensation;
 - (viii) nontaxable strike benefits;
 - (ix) the gross amounts of payments received in the nature of disability income or sick pay as a result of accident, sickness, or other disability, whether funded through insurance or otherwise;
 - (x) a lump-sum distribution under section 402(e)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1995;
 - (xi) contributions made by the claimant to an individual retirement account, including a qualified voluntary employee contribution; simplified employee pension plan; self-employed retirement plan; cash or deferred arrangement plan under section 401(k) of the Internal Revenue Code; or deferred compensation plan under section 457 of the Internal Revenue Code;
 - (xii) nontaxable scholarship or fellowship grants;
 - (xiii) the amount of deduction allowed under section 199 of the Internal Revenue Code;
 - (xiv) the amount of deduction allowed under section 220 or 223 of the Internal Revenue Code;
 - (xv) the amount deducted for tuition expenses under section 222 of the Internal Revenue Code; and
 - (xvi) the amount deducted for certain expenses of elementary and secondary school teachers under section 62(a)(2)(D) of the Internal Revenue Code.

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

- (b) "Income" does not include:
 - (1) amounts excluded pursuant to the Internal Revenue Code, sections 101(a) and 102;
 - (2) amounts of any pension or annuity that were exclusively funded by the claimant or spouse if the funding payments were not excluded from federal adjusted gross income in the years when the payments were made;
 - (3) surplus food or other relief in kind supplied by a governmental agency;
 - (4) relief granted under chapter 290A;
 - (5) child support payments received under a temporary or final decree of dissolution or legal separation; and
 - (6) restitution payments received by eligible individuals and excludable interest as defined in section 803 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16.