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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-SIXTH
SESSION**

HOUSE FILE No. 2319

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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; individual income and corporate franchise tax; clarifying the
1.3 treatment of certain built-in losses of certain banks with an ownership change;
1.4 amending Minnesota Statutes 2008, section 290.01, subdivisions 19c, 19d;
1.5 proposing coding for new law in Minnesota Statutes, chapter 290.

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

1.7 Section 1. Minnesota Statutes 2008, section 290.01, subdivision 19c, is amended to
1.8 read:

1.9 Subd. 19c. **Corporations; additions to federal taxable income.** For corporations,
1.10 there shall be added to federal taxable income:

1.11 (1) the amount of any deduction taken for federal income tax purposes for income,
1.12 excise, or franchise taxes based on net income or related minimum taxes, including but not
1.13 limited to the tax imposed under section 290.0922, paid by the corporation to Minnesota,
1.14 another state, a political subdivision of another state, the District of Columbia, or any
1.15 foreign country or possession of the United States;

1.16 (2) interest not subject to federal tax upon obligations of: the United States, its
1.17 possessions, its agencies, or its instrumentalities; the state of Minnesota or any other
1.18 state, any of its political or governmental subdivisions, any of its municipalities, or any
1.19 of its governmental agencies or instrumentalities; the District of Columbia; or Indian
1.20 tribal governments;

1.21 (3) exempt-interest dividends received as defined in section 852(b)(5) of the Internal
1.22 Revenue Code;

1.23 (4) the amount of any net operating loss deduction taken for federal income tax
1.24 purposes under section 172 or 832(c)(10) of the Internal Revenue Code or operations loss
1.25 deduction under section 810 of the Internal Revenue Code;

- 2.1 (5) the amount of any special deductions taken for federal income tax purposes
2.2 under sections 241 to 247 and 965 of the Internal Revenue Code;
- 2.3 (6) losses from the business of mining, as defined in section 290.05, subdivision 1,
2.4 clause (a), that are not subject to Minnesota income tax;
- 2.5 (7) the amount of any capital losses deducted for federal income tax purposes under
2.6 sections 1211 and 1212 of the Internal Revenue Code;
- 2.7 (8) the exempt foreign trade income of a foreign sales corporation under sections
2.8 921(a) and 291 of the Internal Revenue Code;
- 2.9 (9) the amount of percentage depletion deducted under sections 611 through 614 and
2.10 291 of the Internal Revenue Code;
- 2.11 (10) for certified pollution control facilities placed in service in a taxable year
2.12 beginning before December 31, 1986, and for which amortization deductions were elected
2.13 under section 169 of the Internal Revenue Code of 1954, as amended through December
2.14 31, 1985, the amount of the amortization deduction allowed in computing federal taxable
2.15 income for those facilities;
- 2.16 (11) the amount of any deemed dividend from a foreign operating corporation
2.17 determined pursuant to section 290.17, subdivision 4, paragraph (g). The deemed dividend
2.18 shall be reduced by the amount of the addition to income required by clauses (20), (21),
2.19 (22), and (23);
- 2.20 (12) the amount of a partner's pro rata share of net income which does not flow
2.21 through to the partner because the partnership elected to pay the tax on the income under
2.22 section 6242(a)(2) of the Internal Revenue Code;
- 2.23 (13) the amount of net income excluded under section 114 of the Internal Revenue
2.24 Code;
- 2.25 (14) any increase in subpart F income, as defined in section 952(a) of the Internal
2.26 Revenue Code, for the taxable year when subpart F income is calculated without regard
2.27 to the provisions of section 103 of Public Law 109-222;
- 2.28 (15) 80 percent of the depreciation deduction allowed under section 168(k)(1)(A)
2.29 and (k)(4)(A) of the Internal Revenue Code. For purposes of this clause, if the taxpayer
2.30 has an activity that in the taxable year generates a deduction for depreciation under
2.31 section 168(k)(1)(A) and (k)(4)(A) and the activity generates a loss for the taxable year
2.32 that the taxpayer is not allowed to claim for the taxable year, "the depreciation allowed
2.33 under section 168(k)(1)(A) and (k)(4)(A)" for the taxable year is limited to excess of the
2.34 depreciation claimed by the activity under section 168(k)(1)(A) and (k)(4)(A) over the
2.35 amount of the loss from the activity that is not allowed in the taxable year. In succeeding

3.1 taxable years when the losses not allowed in the taxable year are allowed, the depreciation
3.2 under section 168(k)(1)(A) and (k)(4)(A) is allowed;

3.3 (16) 80 percent of the amount by which the deduction allowed by section 179 of the
3.4 Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal
3.5 Revenue Code of 1986, as amended through December 31, 2003;

3.6 (17) to the extent deducted in computing federal taxable income, the amount of the
3.7 deduction allowable under section 199 of the Internal Revenue Code;

3.8 (18) the exclusion allowed under section 139A of the Internal Revenue Code for
3.9 federal subsidies for prescription drug plans;

3.10 (19) the amount of expenses disallowed under section 290.10, subdivision 2;

3.11 (20) an amount equal to the interest and intangible expenses, losses, and costs paid,
3.12 accrued, or incurred by any member of the taxpayer's unitary group to or for the benefit
3.13 of a corporation that is a member of the taxpayer's unitary business group that qualifies
3.14 as a foreign operating corporation. For purposes of this clause, intangible expenses and
3.15 costs include:

3.16 (i) expenses, losses, and costs for, or related to, the direct or indirect acquisition,
3.17 use, maintenance or management, ownership, sale, exchange, or any other disposition of
3.18 intangible property;

3.19 (ii) losses incurred, directly or indirectly, from factoring transactions or discounting
3.20 transactions;

3.21 (iii) royalty, patent, technical, and copyright fees;

3.22 (iv) licensing fees; and

3.23 (v) other similar expenses and costs.

3.24 For purposes of this clause, "intangible property" includes stocks, bonds, patents, patent
3.25 applications, trade names, trademarks, service marks, copyrights, mask works, trade
3.26 secrets, and similar types of intangible assets.

3.27 This clause does not apply to any item of interest or intangible expenses or costs paid,
3.28 accrued, or incurred, directly or indirectly, to a foreign operating corporation with respect
3.29 to such item of income to the extent that the income to the foreign operating corporation
3.30 is income from sources without the United States as defined in subtitle A, chapter 1,
3.31 subchapter N, part 1, of the Internal Revenue Code;

3.32 (21) except as already included in the taxpayer's taxable income pursuant to clause
3.33 (20), any interest income and income generated from intangible property received or
3.34 accrued by a foreign operating corporation that is a member of the taxpayer's unitary
3.35 group. For purposes of this clause, income generated from intangible property includes:

- 4.1 (i) income related to the direct or indirect acquisition, use, maintenance or
 4.2 management, ownership, sale, exchange, or any other disposition of intangible property;
 4.3 (ii) income from factoring transactions or discounting transactions;
 4.4 (iii) royalty, patent, technical, and copyright fees;
 4.5 (iv) licensing fees; and
 4.6 (v) other similar income.

4.7 For purposes of this clause, "intangible property" includes stocks, bonds, patents, patent
 4.8 applications, trade names, trademarks, service marks, copyrights, mask works, trade
 4.9 secrets, and similar types of intangible assets.

4.10 This clause does not apply to any item of interest or intangible income received or accrued
 4.11 by a foreign operating corporation with respect to such item of income to the extent that
 4.12 the income is income from sources without the United States as defined in subtitle A,
 4.13 chapter 1, subchapter N, part 1, of the Internal Revenue Code;

4.14 (22) the dividends attributable to the income of a foreign operating corporation that
 4.15 is a member of the taxpayer's unitary group in an amount that is equal to the dividends
 4.16 paid deduction of a real estate investment trust under section 561(a) of the Internal
 4.17 Revenue Code for amounts paid or accrued by the real estate investment trust to the
 4.18 foreign operating corporation;

4.19 (23) the income of a foreign operating corporation that is a member of the taxpayer's
 4.20 unitary group in an amount that is equal to gains derived from the sale of real or personal
 4.21 property located in the United States; ~~and~~

4.22 (24) for taxable years beginning after December 31, 2006, and before January 1,
 4.23 2008, the additional amount allowed as a deduction for donation of computer technology
 4.24 and equipment under section 170(e)(6) of the Internal Revenue Code, to the extent
 4.25 deducted from taxable income; and

4.26 (25) the amount of any deduction attributable to built-in losses under section 382
 4.27 of the Internal Revenue Code deducted in computing federal taxable income for the
 4.28 taxable year under Internal Revenue Service Notice 2008-83, but disallowed under section
 4.29 290.094 for that taxable year.

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

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

5.1 Subd. 19d. **Corporations; modifications decreasing federal taxable income.** For
5.2 corporations, there shall be subtracted from federal taxable income after the increases
5.3 provided in subdivision 19c:

5.4 (1) the amount of foreign dividend gross-up added to gross income for federal
5.5 income tax purposes under section 78 of the Internal Revenue Code;

5.6 (2) the amount of salary expense not allowed for federal income tax purposes due to
5.7 claiming the work opportunity credit under section 51 of the Internal Revenue Code;

5.8 (3) any dividend (not including any distribution in liquidation) paid within the
5.9 taxable year by a national or state bank to the United States, or to any instrumentality of
5.10 the United States exempt from federal income taxes, on the preferred stock of the bank
5.11 owned by the United States or the instrumentality;

5.12 (4) amounts disallowed for intangible drilling costs due to differences between
5.13 this chapter and the Internal Revenue Code in taxable years beginning before January
5.14 1, 1987, as follows:

5.15 (i) to the extent the disallowed costs are represented by physical property, an amount
5.16 equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09,
5.17 subdivision 7, subject to the modifications contained in subdivision 19e; and

5.18 (ii) to the extent the disallowed costs are not represented by physical property, an
5.19 amount equal to the allowance for cost depletion under Minnesota Statutes 1986, section
5.20 290.09, subdivision 8;

5.21 (5) the deduction for capital losses pursuant to sections 1211 and 1212 of the
5.22 Internal Revenue Code, except that:

5.23 (i) for capital losses incurred in taxable years beginning after December 31, 1986,
5.24 capital loss carrybacks shall not be allowed;

5.25 (ii) for capital losses incurred in taxable years beginning after December 31, 1986,
5.26 a capital loss carryover to each of the 15 taxable years succeeding the loss year shall be
5.27 allowed;

5.28 (iii) for capital losses incurred in taxable years beginning before January 1, 1987, a
5.29 capital loss carryback to each of the three taxable years preceding the loss year, subject to
5.30 the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed; and

5.31 (iv) for capital losses incurred in taxable years beginning before January 1, 1987,
5.32 a capital loss carryover to each of the five taxable years succeeding the loss year to the
5.33 extent such loss was not used in a prior taxable year and subject to the provisions of
5.34 Minnesota Statutes 1986, section 290.16, shall be allowed;

5.35 (6) an amount for interest and expenses relating to income not taxable for federal
5.36 income tax purposes, if (i) the income is taxable under this chapter and (ii) the interest and

6.1 expenses were disallowed as deductions under the provisions of section 171(a)(2), 265 or
6.2 291 of the Internal Revenue Code in computing federal taxable income;

6.3 (7) in the case of mines, oil and gas wells, other natural deposits, and timber for
6.4 which percentage depletion was disallowed pursuant to subdivision 19c, clause (9), a
6.5 reasonable allowance for depletion based on actual cost. In the case of leases the deduction
6.6 must be apportioned between the lessor and lessee in accordance with rules prescribed
6.7 by the commissioner. In the case of property held in trust, the allowable deduction must
6.8 be apportioned between the income beneficiaries and the trustee in accordance with the
6.9 pertinent provisions of the trust, or if there is no provision in the instrument, on the basis
6.10 of the trust's income allocable to each;

6.11 (8) for certified pollution control facilities placed in service in a taxable year
6.12 beginning before December 31, 1986, and for which amortization deductions were elected
6.13 under section 169 of the Internal Revenue Code of 1954, as amended through December
6.14 31, 1985, an amount equal to the allowance for depreciation under Minnesota Statutes
6.15 1986, section 290.09, subdivision 7;

6.16 (9) amounts included in federal taxable income that are due to refunds of income,
6.17 excise, or franchise taxes based on net income or related minimum taxes paid by the
6.18 corporation to Minnesota, another state, a political subdivision of another state, the
6.19 District of Columbia, or a foreign country or possession of the United States to the extent
6.20 that the taxes were added to federal taxable income under section 290.01, subdivision 19c,
6.21 clause (1), in a prior taxable year;

6.22 (10) 80 percent of royalties, fees, or other like income accrued or received from a
6.23 foreign operating corporation or a foreign corporation which is part of the same unitary
6.24 business as the receiving corporation, unless the income resulting from such payments or
6.25 accruals is income from sources within the United States as defined in subtitle A, chapter
6.26 1, subchapter N, part 1, of the Internal Revenue Code;

6.27 (11) income or gains from the business of mining as defined in section 290.05,
6.28 subdivision 1, clause (a), that are not subject to Minnesota franchise tax;

6.29 (12) the amount of disability access expenditures in the taxable year which are not
6.30 allowed to be deducted or capitalized under section 44(d)(7) of the Internal Revenue Code;

6.31 (13) the amount of qualified research expenses not allowed for federal income tax
6.32 purposes under section 280C(c) of the Internal Revenue Code, but only to the extent that
6.33 the amount exceeds the amount of the credit allowed under section 290.068;

6.34 (14) the amount of salary expenses not allowed for federal income tax purposes due
6.35 to claiming the Indian employment credit under section 45A(a) of the Internal Revenue
6.36 Code;

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

7.4 (16) for a corporation whose foreign sales corporation, as defined in section 922
 7.5 of the Internal Revenue Code, constituted a foreign operating corporation during any
 7.6 taxable year ending before January 1, 1995, and a return was filed by August 15, 1996,
 7.7 claiming the deduction under section 290.21, subdivision 4, for income received from
 7.8 the foreign operating corporation, an amount equal to 1.23 multiplied by the amount of
 7.9 income excluded under section 114 of the Internal Revenue Code, provided the income is
 7.10 not income of a foreign operating company;

7.11 (17) any decrease in subpart F income, as defined in section 952(a) of the Internal
 7.12 Revenue Code, for the taxable year when subpart F income is calculated without regard
 7.13 to the provisions of section 103 of Public Law 109-222;

7.14 (18) in each of the five tax years immediately following the tax year in which an
 7.15 addition is required under subdivision 19c, clause (15), an amount equal to one-fifth of
 7.16 the delayed depreciation. For purposes of this clause, "delayed depreciation" means the
 7.17 amount of the addition made by the taxpayer under subdivision 19c, clause (15). The
 7.18 resulting delayed depreciation cannot be less than zero; ~~and~~

7.19 (19) in each of the five tax years immediately following the tax year in which an
 7.20 addition is required under subdivision 19c, clause (16), an amount equal to one-fifth of
 7.21 the amount of the addition; and

7.22 (20) for a bank with an ownership change qualifying under Internal Revenue Service
 7.23 Notice 2008-83 and section 1261 of Public Law 111-5, Division B, allowances for losses
 7.24 on loans or bad debts (including deductions for a reasonable addition to a reserve for bad
 7.25 debts) that were added to federal taxable income under section 290.094 and subdivision
 7.26 19c, clause (25), in a prior taxable year, but only to the extent and in the taxable year
 7.27 permitted under section 290.094 and section 382 of the Internal Revenue Code, applied
 7.28 without regard to the provisions of Internal Revenue Service Notice 2008-83.

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

7.31 **Sec. 3. [290.094] EFFECT OF IRS NOTICE 2008-83.**

7.32 Subdivision 1. **Findings.** (a) The Minnesota legislature makes the following
 7.33 findings in connection with Internal Revenue Service Notice 2008-83 and its application
 7.34 to the computation of taxable income and tax under this chapter. As used in the section,
 7.35 "the notice" refers to Internal Revenue Service Notice 2008-83.

8.1 (b) The legislature approves and endorses the findings of Congress in section 1261,
8.2 subsection (a), of Public Law 111-5, Division B, that the legal authority of the Internal
8.3 Revenue Service to prescribe the notice is doubtful and that the notice is inconsistent with
8.4 the intent of section 382 of the Internal Revenue Code. The legislature further finds that
8.5 the notice is inconsistent with the intent of the legislature in adopting and conforming to
8.6 the provisions of section 382 for purposes of computing the tax under this chapter in
8.7 the legislature's enactments since 1986.

8.8 (c) The legislature further finds that in conforming to and adopting the provisions of
8.9 section 382 of the Internal Revenue Code for purposes of computing tax liability under
8.10 this chapter, it did not adopt as part of Minnesota law future Internal Revenue Service
8.11 notices construing that provision, when the Internal Revenue Service's legal authority to
8.12 issue the notice is doubtful. Doing so may delegate the legislature's constitutional power
8.13 to the Internal Revenue Service contrary to the holding of the Minnesota Supreme Court
8.14 in Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 558 (1971).

8.15 (d) The legislature further finds that it is in the public interest to conform to the
8.16 provisions of the notice and section 1261 with regard to the computation of individual
8.17 income tax, given the likely small effect on tax liability and the difficulties that failing
8.18 to conform to federal law would create for tax compliance and administration of the
8.19 individual income tax.

8.20 (e) The legislature further finds that it is not in the public interest to conform to the
8.21 notice with regard to the computation of corporate franchise tax. Following the notice
8.22 would result in significant reductions in corporate franchise tax liability and temporary or
8.23 permanent reductions in state revenue. The state has little or no interest in encouraging
8.24 taxpayers to rely on Internal Revenue Service notices of doubtful legality for Minnesota
8.25 state tax purposes and taxpayers have no reasonable expectation that they can rely on them
8.26 as to the Minnesota tax effects of transactions. In addition, the affected taxpayers are
8.27 likely sufficiently sophisticated and capable to calculate their Minnesota and federal tax
8.28 following different rules governing the allowability of deductions for built-in losses.

8.29 Subd. 2. **Application of the notice.** (a) For purposes of computing federal taxable
8.30 income in computing the individual income tax, section 1261 of Public Law 111-5,
8.31 Division B, applies and is in effect at the same time the provision is in effect for federal
8.32 purposes.

8.33 (b) For purposes of the corporate franchise tax imposed under sections 290.02,
8.34 subdivision 1, and 290.0921 and any related provision of this chapter or chapter 289A,
8.35 the provisions of Internal Revenue Service Notice 2008-83 do not apply and the taxable
8.36 income of corporations, subject to tax under subchapter C of the Internal Revenue Code,

9.1 must be computed without regard to the notice. The provisions of this paragraph apply
9.2 without regard to whether the ownership change occurred on, before, or after January 16,
9.3 2009. Taxable income must be computed as if the notice did not apply, disallowing any
9.4 deduction for losses on loans or bad debts (including any deduction for a reasonable
9.5 addition to a reserve for bad debts) permitted by the notice that otherwise would have been
9.6 treated as a built-in loss or a deduction that is attributable to periods before the change
9.7 date under section 382 of the Internal Revenue Code.

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