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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2811

03/09/2023

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The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act

1.2 relating to commerce; establishing a liquid fuel modernization tax credit; modifying

1.3 individual income and corporate franchise taxes; requiring a report; amending

1.4 Minnesota Statutes 2022, sections 239.7911, by adding a subdivision; 290.0131,

1.5 by adding a subdivision; 290.0133, by adding a subdivision; 290.06, by adding a

1.6 subdivision; proposing coding for new law in Minnesota Statutes, chapter 239.

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

1.8 Section 1. [239.787] LIQUID FUEL MODERNIZATION TAX CREDIT.

1.9 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have

1.10 the meanings given them.

1.11 (b) "Aboveground storage tank system" means a system of components required to safely

1.12 store liquid fuel aboveground and make the fuel available to (1) purchase by a consumer,

1.13 or (2) load onto a fuel transport vehicle. Aboveground storage tank system includes but is

1.14 not limited to tanks, vent tubes, tank monitors, piping, pumps, containment, meters, loading

1.15 racks, dispensers, hoses, and pump handles that are primarily located aboveground.

1.16 (c) "Bulk plant" means a liquid fuel storage facility with no more than 250,000 gallons

1.17 of combined aboveground and underground storage capacity.

1.18 (d) "Eligible entity" means a corporation, partnership, S corporation, limited liability

1.19 company, or sole proprietorship, that installs eligible fuel infrastructure at a new or existing

1.20 retail fueling site or bulk plant owned or operated by the corporation, partnership, S

1.21 corporation, limited liability company, or sole proprietorship.

1.22 (e) "Eligible fuel infrastructure" means:

2.1 (1) all aboveground storage tank system components that are compatible with higher
2.2 biofuel blends and essential parts and materials that directly support the components; and

2.3 (2) all underground storage tank system components that are compatible with higher
2.4 biofuel blends, and essential parts and materials that directly support the components.

2.5 (f) "Eligible fuel infrastructure costs" means all reasonable equipment, material, and
2.6 labor costs, as determined by the commissioner, in a taxable year that are paid by an eligible
2.7 entity to acquire and install eligible fuel infrastructure at a retail fueling site or bulk plant,
2.8 less any amount of financial assistance received by the entity for eligible fuel infrastructure
2.9 at the site or plant.

2.10 (g) "Financial assistance" means federal, state, local, and private grants, forgivable loans,
2.11 and insurance proceeds that support the installation of eligible fuel infrastructure.

2.12 (h) "Higher biofuel blends" means (1) blends of gasoline and ethanol containing more
2.13 than ten percent ethanol by volume, and (2) blends of diesel and biodiesel containing more
2.14 than 20 percent biodiesel by volume.

2.15 (i) "Liquid fuel" means petroleum products.

2.16 (j) "Petroleum products" means the products identified in section 296A.01, subdivision
2.17 42, and blends of diesel and biodiesel containing between 21 and 100 percent biodiesel.

2.18 (k) "Retail fueling site" means a convenience store, service station, or other facility that
2.19 offers liquid fuel for sale to consumers.

2.20 (l) "Underground storage tank system" means a system of components required to safely
2.21 store liquid fuel underground and make the fuel available to (1) purchase by a consumer,
2.22 or (2) load onto a fuel transport vehicle. Underground storage tank system includes but is
2.23 not limited to spill buckets, drop tubes, tanks, vent tubes, tank monitors, piping, submersible
2.24 pumps, containment, meters, dispensers, hoses, and pump handles that are located above
2.25 or below ground.

2.26 Subd. 2. **Credit allowed.** (a) An eligible entity is allowed a tax credit for eligible fuel
2.27 infrastructure costs at retail fueling sites and bulk plants, as provided by this section and
2.28 section 290.06, subdivision 41. The credit is equal to the lesser of:

2.29 (1) 65 percent of the aggregate amount of eligible fuel infrastructure costs paid by the
2.30 eligible entity for retail fueling sites or bulk plants; or

2.31 (2) \$800,000.

2.32 (b) A unitary business may claim only one credit each year under this subdivision.

3.1 (c) For an individual or eligible entity holding multiple ownership interests in other
3.2 eligible entities, the aggregate credit amount that may be claimed by the individual or entity
3.3 holding the multiple interests must not exceed the maximum credit allowed to an eligible
3.4 entity not holding multiple interests under this subdivision.

3.5 Subd. 3. **Applications; credit certificate.** (a) To obtain a credit, an eligible entity must
3.6 apply to the commissioner for a credit certificate, in the form and manner required by the
3.7 commissioner. Applications must be submitted no later than one year after the date the costs
3.8 used to qualify for the credit are paid by the eligible entity and must be accompanied by:

3.9 (1) detailed information regarding the total eligible fuel infrastructure costs paid in the
3.10 taxable year for which the credit is sought;

3.11 (2) the total amount of financial assistance received in the taxable year for each site
3.12 subject to the credit application;

3.13 (3) an invoice that demonstrates to the commissioner's satisfaction that all invoiced costs
3.14 were incurred after December 31, 2023, and paid in full by the applicant;

3.15 (4) all successfully filed compatibility documents, notices, and registration forms required
3.16 by law; and

3.17 (5) an affidavit certifying that:

3.18 (i) all equipment and labor costs submitted for purposes of the credit application were
3.19 incurred to purchase or install eligible fuel infrastructure;

3.20 (ii) no contractor has advanced funds to the applicant; and

3.21 (iii) the applicant must use the eligible fuel infrastructure to:

3.22 (A) offer for sale at the retail fueling site a blend of gasoline and ethanol containing
3.23 more than ten percent ethanol by volume, or a blend of diesel and biodiesel in which the
3.24 biodiesel content exceeds the content required under section 239.77, subdivision 2; or

3.25 (B) store a higher biofuel blend at the bulk plant.

3.26 (b) The commissioner must accept or reject a complete initial application within 60 days
3.27 of the date the initial application is submitted, and must accept or reject a supplemental
3.28 application within 120 days of the date the supplemental application is submitted. The
3.29 commissioner must notify the applicant in writing if additional time is necessary to review
3.30 the initial or supplemental application. The commissioner must send written notification of
3.31 the commissioner's credit application decision by first class United States mail to the applicant
3.32 at the applicant's last known address.

4.1 (c) Within 30 days from the date the commissioner approves an application for the credit,
4.2 the commissioner must issue a credit certificate verifying the eligible entity's eligibility for
4.3 the credit, the total amount of financial assistance received for each retail fueling site or
4.4 bulk plant, excluding the credit amount, the amount of the credit allowed, and the taxable
4.5 year in which the credit may be claimed.

4.6 Subd. 4. **Duty to provide information.** (a) A person who submits a credit application
4.7 to the commissioner, or who has issued invoices or other documents which are the basis of
4.8 an application, must (1) furnish to the commissioner copies of any financial records that
4.9 the commissioner requests and that are relevant to determining the validity of the costs listed
4.10 in the application, or (2) make the financial records reasonably available to the commissioner
4.11 to inspect and audit. The commissioner may obtain access to information that must be made
4.12 available under this section as provided in paragraph (b).

4.13 (b) The commissioner, commissioner of revenue, or any member, employee, or agent
4.14 of the agency authorized by the commissioner or commissioner of revenue, may, upon
4.15 presentation of official agency credentials, take any of the following actions:

4.16 (1) examine and copy books, papers, records, memoranda, or data of a person who has
4.17 a duty to provide information to the commissioner under paragraph (a); and

4.18 (2) enter upon public or private property to take action authorized by this subdivision,
4.19 including to obtain information from a person who has a duty to provide the information
4.20 under paragraph (a), to (i) conduct surveys and investigations, and (ii) take corrective action.

4.21 Subd. 5. **Appealing credit decision.** (a) A credit applicant may appeal an application
4.22 decision made by the commissioner under this section to the Liquid Fuel Modernization
4.23 Board by submitting a written notice to the board setting forth the specific basis for the
4.24 appeal. The credit applicant must file with the board written notice of an appeal of a decision
4.25 made by the commissioner within 60 days of the date that the commissioner sends the
4.26 applicant written notice of the decision. The board must consider the appeal within 90 days
4.27 of the date the applicant's written notice of appeal is received. The written notice must set
4.28 forth the specific basis for the appeal.

4.29 (b) A credit applicant may appeal a decision of the board as a contested case under
4.30 chapter 14. A credit applicant must provide to the board written notification of a request
4.31 for a contested case, setting forth the specific basis for the appeal, within 30 days of the
4.32 date the board makes a decision. Only an applicant may appeal the board's decision. The
4.33 commissioner must make the final decision in a contested case requested by an applicant.

5.1 Subd. 6. **Credit revocation.** (a) The commissioner of commerce or the commissioner
5.2 of revenue may revoke all or a portion of the amount of any credit issued under this section
5.3 if the credit applicant misrepresents or omits a fact relevant to a decision made by the
5.4 commissioner under this section. The commissioner or commissioner of revenue and the
5.5 credit recipient may agree to a settlement or compromise on the amount of the credit subject
5.6 to revocation.

5.7 (b) The taxpayer subject to a credit revocation under this subdivision must, for purposes
5.8 of the taxes imposed under chapter 290, amend all returns as required by the commissioner
5.9 of revenue and pay any additional amount of tax due as a result of any amendment.

5.10 (c) The commissioner or commissioner of revenue may enforce the provisions of this
5.11 subdivision and may recover administrative and legal expenses in a civil action brought by
5.12 the attorney general against the credit applicant in a district court or the Minnesota Tax
5.13 Court. If the commissioner's or commissioner of revenue's revocation is based on willful
5.14 actions of the applicant, the applicant must also forfeit and pay to the state a civil penalty
5.15 in an amount to be determined by the court. A civil penalty under this paragraph must not
5.16 exceed the full amount of the credit.

5.17 Subd. 7. **Fraud.** (a) If a person, with intent to defraud, issues an invoice or other document
5.18 with knowledge that the invoice or other document is in whole or in part false, and with
5.19 knowledge that the invoice or other document is being submitted in relation to an application
5.20 for the credit allowed under this section:

5.21 (1) the person is considered to have presented a false claim to a public body under section
5.22 609.465; and

5.23 (2) the commissioner may demand that the person pay an amount equal to all or a portion
5.24 of the amount of the credit received as a result of a credit decision made on the basis of the
5.25 false invoice or other document.

5.26 (b) If the penalty in paragraph (a) is not paid upon the commissioner's demand, the
5.27 commissioner may recover the penalty amount, with administrative and legal expenses, in
5.28 a civil action brought by the attorney general against the credit applicant in a district court.
5.29 The applicant must also forfeit and pay to the state a civil penalty in an amount to be
5.30 determined by the court. A civil penalty under this paragraph must not exceed the full
5.31 amount of the credit received by the person on the basis of the false invoice or other
5.32 document.

5.33 Subd. 8. **Kickbacks.** (a) A consultant or contractor must not agree to pay or forgive, as
5.34 a condition of performing services, any amount of eligible fuel infrastructure costs billed

6.1 or invoiced at a retail fueling site or bulk plant for which the costs are used by a credit
6.2 applicant to claim the credit under this section. An applicant must not accept forgiveness
6.3 of or demand payment from a consultant or contractor for any amount of eligible fuel
6.4 infrastructure costs billed or invoiced at a retail fueling site or bulk plant for which the costs
6.5 are used by a credit applicant to claim the credit under this section.

6.6 (b) Nothing in this subdivision prohibits forgiveness or payments of costs provided that
6.7 the forgiveness or payment of costs are subtracted from the eligible fuel infrastructure costs
6.8 detailed in an application under subdivision 3, prior to the issuance of a credit certificate.
6.9 For forgiveness or payments of costs occurring after the credit certificate is issued, a credit
6.10 applicant may amend their application after the credit certificate is issued, to subtract eligible
6.11 fuel infrastructure costs, if the commissioner and commissioner of revenue both consent to
6.12 the amendment, which must be made in the form and manner required by the commissioner.
6.13 If the application is amended, the commissioner must determine the necessary adjustments
6.14 to the credit certificate, modify the certificate accordingly, provide the amended certificate
6.15 to the credit applicant, and notify the commissioner of revenue of the modification. Within
6.16 30 days, the applicant must file the amended credit certificate with the commissioner of
6.17 revenue, and make any amendments to returns and pay any additional tax due as provided
6.18 for revocations under subdivision 6.

6.19 (c) A violation of this subdivision is fraud, as provided in subdivision 7.

6.20 Subd. 9. **Board.** (a) The commissioner must convene a Liquid Fuel Modernization
6.21 Board. The board consists of:

6.22 (1) the commissioner or the commissioner's designee;

6.23 (2) the commissioner of agriculture or the commissioner's designee;

6.24 (3) the commissioner of the Pollution Control Agency or the commissioner's designee;

6.25 (4) a Minnesota fuel equipment and service industry representative, appointed by the
6.26 governor; and

6.27 (5) a Minnesota petroleum industry representative, appointed by the governor.

6.28 (b) The board member appointed under paragraph (a), clause (5), must serve as chair of
6.29 the board.

6.30 (c) Section 15.0575 governs the filling of positions and vacancies, membership terms,
6.31 payment of compensation and expenses, and removal of members.

7.1 (d) The board's duties are to (1) advise the commissioner regarding the liquid fuel
7.2 modernization tax credit, and (2) consider appeals under subdivision 7.

7.3 Subd. 10. **Rules.** The commissioner may adopt rules under chapter 14 necessary to
7.4 implement this section.

7.5 Subd. 11. **Expiration.** This section expires January 1, 2034, for credits claimed in taxable
7.6 years beginning after December 31, 2033, except that the expiration of this section does not
7.7 affect the commissioner's authority to enforce and administer this section for credits claimed
7.8 under this subdivision in prior taxable years.

7.9 **EFFECTIVE DATE.** This section is effective the day following final enactment and
7.10 applies to credits claimed in taxable years beginning after December 31, 2023.

7.11 Sec. 2. Minnesota Statutes 2022, section 239.7911, is amended by adding a subdivision
7.12 to read:

7.13 Subd. 3. **Equipment compatibility goal.** (a) The equipment compatibility goal of the
7.14 state is that no later than December 31, 2028, at least 50 percent of retail gasoline storage
7.15 and dispensing equipment is certified for and offering for sale the highest ethanol blend
7.16 authorized by law for use in standard combustion engines.

7.17 (b) No later than February 1 each year, the commissioner, in consultation with the
7.18 commissioner of agriculture and the Liquid Fuel Modernization Board established under
7.19 section 239.787, must report to the legislative committees with jurisdiction over commerce
7.20 and agriculture regarding:

7.21 (1) progress made toward achieving the goal in paragraph (a); and

7.22 (2) the total expenditures, and the total and average liquid fuels modernization tax credit
7.23 per site, granted under section 239.787.

7.24 (c) If equipment and labor availability, blending capacity, ethanol outages at pipelines
7.25 or refineries, federal requirements, or other relevant constraints impede progress in achieving
7.26 the goal in paragraph (a), the commissioner must identify the constraints, along with any
7.27 corresponding recommendations, in the reports required under paragraph (b).

7.28 (d) This subdivision expires June 30, 2034.

7.29 **EFFECTIVE DATE.** This section is effective July 1, 2023.

8.1 Sec. 3. Minnesota Statutes 2022, section 290.0131, is amended by adding a subdivision
8.2 to read:

8.3 Subd. 21. **Eligible fuel infrastructure costs; liquid fuel modernization tax credit.** The
8.4 amount of any deduction under the Internal Revenue Code for eligible fuel infrastructure
8.5 costs, as defined in section 239.787, subdivision 1, used to claim the credit in section 290.06,
8.6 subdivision 41, is an addition.

8.7 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
8.8 31, 2023.

8.9 Sec. 4. Minnesota Statutes 2022, section 290.0133, is amended by adding a subdivision
8.10 to read:

8.11 Subd. 16. **Eligible fuel infrastructure costs; liquid fuel modernization tax credit.** The
8.12 amount of any deduction under the Internal Revenue Code for eligible fuel infrastructure
8.13 costs, as defined in section 239.787, subdivision 1, used to claim the credit in section 290.06,
8.14 subdivision 41, is an addition.

8.15 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
8.16 31, 2023.

8.17 Sec. 5. Minnesota Statutes 2022, section 290.06, is amended by adding a subdivision to
8.18 read:

8.19 Subd. 41. **Liquid fuel modernization tax credit.** (a) A taxpayer may claim a credit
8.20 against the tax imposed by this chapter equal to the amount certified on a credit certificate
8.21 issued under section 239.787, subdivision 3, subject to the limitations under this subdivision.

8.22 (b) The credit is limited to the liability for tax, as computed under this chapter, for the
8.23 taxable year. If the amount of the credit determined under this subdivision for any taxable
8.24 year exceeds this limitation, the excess is a liquid fuels modernization tax credit carryover
8.25 to each of the ten succeeding taxable years. The entire amount of the excess unused credit
8.26 for the taxable year is carried first to the earliest of the taxable years to which the credit
8.27 may be carried and then to each successive year to which the credit may be carried. The
8.28 amount of the unused credit that may be added under this paragraph must not exceed the
8.29 taxpayer's liability for tax, less any liquid fuel modernization tax credit for the taxable year.

8.30 (c) Credits allowed to a partnership, a limited liability company taxed as a partnership,
8.31 or an S corporation are passed through to the partners, members, shareholders, or owners,
8.32 respectively, pro rata to each based on the partner's, member's, shareholder's, or owner's

9.1 share of the entity's assets, or as specially allocated in the organizational documents or any
9.2 other executed agreement, as of the last day of the taxable year.

9.3 (d) Notwithstanding the approval, certification, administrative, and enforcement authority
9.4 provided to the commissioner of commerce under section 239.787, the commissioner may
9.5 utilize any audit and examination powers under chapter 270C or 289A to the extent necessary
9.6 to verify that the taxpayer is eligible for the credit and to assess the amount of any improperly
9.7 claimed credit.

9.8 (e) This subdivision expires January 1, 2034, for taxable years beginning after December
9.9 31, 2033, except that the expiration of this section does not affect the commissioner of
9.10 revenue's authority to audit or power of examination and assessment for credits claimed in
9.11 prior taxable years under this subdivision.

9.12 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
9.13 31, 2023.