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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 776

02/04/2021 Authored by Garofalo
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; income; providing a credit for donations to fund K-12
1.3 scholarships; amending Minnesota Statutes 2020, sections 290.0131, by adding a
1.4 subdivision; 290.0133, by adding a subdivision; 290.0674, by adding a subdivision;
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 2020, section 290.0131, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 19. Equity and opportunity donations to qualified foundations. The amount
1.10 of the deduction under section 170 of the Internal Revenue Code that represents contributions
1.11 to a qualified foundation under section 290.0693 is an addition.

1.12 EFFECTIVE DATE. This section is effective for taxable years beginning after December
1.13 31, 2021.

1.14 Sec. 2. Minnesota Statutes 2020, section 290.0133, is amended by adding a subdivision
1.15 to read:

1.16 Subd. 15. Equity and opportunity donations to qualified foundations. The amount
1.17 of the deductions under sections 170 and 162 of the Internal Revenue Code that represent
1.18 contributions to a qualified foundation under section 290.0693 are an addition.

1.19 EFFECTIVE DATE. This section is effective for taxable years beginning after December
1.20 31, 2021.

2.1 Sec. 3. Minnesota Statutes 2020, section 290.0674, is amended by adding a subdivision
2.2 to read:

2.3 Subd. 6. **Inflation adjustment.** For taxable years beginning after December 31, 2022,
2.4 the commissioner must adjust for inflation the credit amount and the income threshold at
2.5 which the maximum credit begins to be reduced in subdivision 2, as provided in section
2.6 270C.22. The statutory year is taxable year 2021. The amounts as adjusted must be rounded
2.7 to the nearest \$10 amount. If the amount ends in \$5, the amount is rounded up to the nearest
2.8 \$10 amount.

2.9 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
2.10 31, 2021.

2.11 Sec. 4. **[290.0693] EQUITY AND OPPORTUNITY IN EDUCATION TAX CREDIT.**

2.12 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
2.13 the meanings given.

2.14 (b) "Eligible student" means a student who:

2.15 (1) resides in Minnesota;

2.16 (2) is either:

2.17 (i) a member of a household that has total annual income during the year prior to initial
2.18 receipt of a qualified scholarship or a qualified transportation scholarship, without
2.19 consideration of the benefits under this program, that does not exceed an amount equal to
2.20 two times the income standard used to qualify for a reduced-price meal under the National
2.21 School Lunch Program; or

2.22 (ii) is a child with a disability as defined in section 125A.02; and

2.23 (3) meets one of the following criteria:

2.24 (i) attended a school, as defined in section 120A.22, subdivision 4, in the semester
2.25 preceding initial receipt of a qualified scholarship or a qualified transportation scholarship;

2.26 (ii) is younger than age seven and not enrolled in kindergarten or first grade in the
2.27 semester preceding initial receipt of a qualified scholarship or a qualified transportation
2.28 scholarship;

2.29 (iii) previously received a qualified scholarship or a qualified transportation scholarship
2.30 under this section; or

3.1 (iv) lived in Minnesota for less than a year prior to initial receipt of a qualified scholarship
3.2 or a qualified transportation scholarship.

3.3 (c) "Equity and opportunity in education donation" means a donation to a qualified public
3.4 school foundation or to a qualified foundation that awards qualified scholarships, awards
3.5 qualified transportation scholarships, or makes qualified grants.

3.6 (d) "Household" means household as used to determine eligibility under the National
3.7 School Lunch Program.

3.8 (e) "National School Lunch Program" means the program in United States Code, title
3.9 42, section 1758.

3.10 (f) "Qualified charter school" means a charter elementary or secondary school in
3.11 Minnesota at which at least 30 percent of students qualify for a free or reduced-price meal
3.12 under the National School Lunch Program.

3.13 (g) "Qualified school" means a school operated in Minnesota that is a nonpublic
3.14 elementary or secondary school in Minnesota wherein a resident may legally fulfill the
3.15 state's compulsory attendance laws that:

3.16 (1) is not operated for profit;

3.17 (2) adheres to the provisions of United States Code, title 42, section 1981, and Minnesota
3.18 Statutes, chapter 363A;

3.19 (3) administers the Minnesota Comprehensive Assessments or a norm-referenced test
3.20 in reading and math approved by a qualified foundation to all students in grades 3 to 8 and
3.21 once in high school; and

3.22 (4) reports annual student performance on the test on the school's website, including the
3.23 number of students who opt out of the test, the aggregate test results, and the test results
3.24 disaggregated by student category listed in section 120B.31, subdivision 4, unless the cell
3.25 count data is insufficient to protect student identity.

3.26 (h) "Qualified foundation" means a nonprofit organization granted an exemption from
3.27 the federal income tax under section 501(c)(3) of the Internal Revenue Code that has been
3.28 approved as a qualified foundation by the commissioner of revenue under subdivision 5.

3.29 (i) "Qualified grant" means a grant from a qualified foundation to a qualified charter
3.30 school for use in support of the school's mission of educating students in academics, arts,
3.31 or athletics, including transportation.

4.1 (j) "Qualified public school foundation" means a qualified foundation formed for the
4.2 primary purpose of supporting one or more public schools or school districts in Minnesota
4.3 in which at least 30 percent of students qualify for a free or reduced-price meal under the
4.4 National School Lunch Program.

4.5 (k) "Qualified scholarship" means a payment from a qualified foundation to or on behalf
4.6 of the parent or guardian of an eligible student for payment of tuition for enrollment in
4.7 grades kindergarten through 12 at a qualified school. A qualified scholarship must not
4.8 exceed an amount greater than 70 percent of the state average general education revenue
4.9 under section 126C.10, subdivision 1, per pupil unit.

4.10 (l) "Qualified transportation scholarship" means a payment from a qualified foundation
4.11 to or on behalf of a parent or guardian of an eligible student for payment of transportation
4.12 to a school, as defined in section 120A.22, subdivision 4. A qualified transportation
4.13 scholarship must not exceed an amount greater than 70 percent of the state average general
4.14 education revenue under section 126C.10, subdivision 1, per pupil unit.

4.15 (m) "Total annual income" means the income measure used to determine eligibility
4.16 under the National School Lunch Program in United States Code, title 42, section 1758.

4.17 Subd. 2. **Credit allowed.** (a) An individual or corporate taxpayer who has been issued
4.18 a credit certificate under subdivision 3 is allowed a credit against the tax due under this
4.19 chapter equal to 70 percent of the amount donated during the taxable year to the qualified
4.20 foundation or qualified public school foundation designated on the taxpayer's credit
4.21 certificate. No credit is allowed if the taxpayer designates a specific child as the beneficiary
4.22 of the contribution. No credit is allowed to a taxpayer for an equity and opportunity in
4.23 education donation made before the taxpayer was issued a credit certificate as provided in
4.24 subdivision 3.

4.25 (b) The maximum annual credit allowed is:

4.26 (1) \$21,000 for married joint filers for a one-year donation of \$30,000;

4.27 (2) \$10,500 for other individual filers for a one-year donation of \$15,000; and

4.28 (3) \$105,000 for corporate filers for a one-year donation of \$150,000.

4.29 (c) A taxpayer must provide a copy of the receipt provided by the qualified foundation
4.30 or qualified public school foundation when claiming the credit for the donation if requested
4.31 by the commissioner.

4.32 (d) The credit is limited to the liability for tax under this chapter, including the tax
4.33 imposed by sections 290.0921 and 290.0922.

5.1 (e) If the amount of the credit under this subdivision for any taxable year exceeds the
5.2 limitations under paragraph (d), the excess is a credit carryover to each of the five succeeding
5.3 taxable years. The entire amount of the excess unused credit for the taxable year must be
5.4 carried first to the earliest of the taxable years to which the credit may be carried. The
5.5 amount of the unused credit that may be added under this paragraph may not exceed the
5.6 taxpayer's liability for tax, less the credit for the taxable year. No credit may be carried to
5.7 a taxable year more than five years after the taxable year in which the credit was earned.

5.8 Subd. 3. **Application for credit certificate.** (a) The commissioner must make applications
5.9 for tax credits for 2022 available on the department's website by January 1, 2022.
5.10 Applications for subsequent years must be made available by January 1 of the taxable year.

5.11 (b) A taxpayer must apply to the commissioner for an equity and opportunity in education
5.12 tax credit certificate. The application must be in the form and manner specified by the
5.13 commissioner and must designate the qualified foundation or qualified public school
5.14 foundation to which the taxpayer intends to make a donation. The commissioner must begin
5.15 accepting applications for a taxable year on January 1. The commissioner must issue tax
5.16 credit certificates under this section on a first-come, first-served basis until the maximum
5.17 statewide credit amount has been reached. The certificates must list the qualified foundation
5.18 or qualified public school foundation the taxpayer designated on the application. The
5.19 maximum statewide credit amount is \$35,000,000 per taxable year, excluding any amounts
5.20 carried forward from a previous taxable year under subdivision 2.

5.21 (c) The commissioner must not issue a tax credit certificate for an amount greater than
5.22 the limits in subdivision 2.

5.23 (d) The commissioner must not issue a credit certificate for an application that designates
5.24 a qualified foundation or qualified public school foundation that the commissioner has
5.25 barred from participation as provided in subdivision 5.

5.26 Subd. 4. **Responsibilities of qualified foundations.** (a) A qualified foundation that
5.27 awards qualified scholarships or qualified transportation scholarships must:

5.28 (1) award qualified scholarships or qualified transportation scholarships to eligible
5.29 students;

5.30 (2) not restrict the availability of scholarships to students of one qualified school;

5.31 (3) not charge a fee of any kind for a child to be considered for a scholarship;

6.1 (4) require a qualified school receiving payment of tuition through a scholarship funded
6.2 by contributions qualifying for the tax credit under this section to sign an agreement that it
6.3 will not use different admissions standards for a student with a qualified scholarship; and

6.4 (5) in awarding scholarships, give priority to a student in a household that has total
6.5 annual income during the year prior to initial receipt of a qualified scholarship, without
6.6 consideration of the benefits under this program, that does not exceed an amount equal to
6.7 two times the income standard used to qualify for a reduced-price meal under the National
6.8 School Lunch Program.

6.9 (b) An entity that is eligible to be a qualified foundation must apply to the commissioner
6.10 by September 15 of the year preceding the year in which it will first receive equity and
6.11 opportunity in education donations. The application must be in the form and manner
6.12 prescribed by the commissioner. The application must:

6.13 (1) demonstrate to the commissioner that the entity has been granted an exemption from
6.14 the federal income tax as an organization described in section 501(c)(3) of the Internal
6.15 Revenue Code; and

6.16 (2) demonstrate the entity's financial accountability by submitting its most recent audited
6.17 financial statement prepared by a certified public accountant firm licensed under chapter
6.18 326A using the Statements on Auditing Standards issued by the Audit Standards Board of
6.19 the American Institute of Certified Public Accountants.

6.20 (c) A qualified foundation must provide to taxpayers who make donations or
6.21 commitments to donate a receipt or verification on a form approved by the commissioner.

6.22 (d) A qualified foundation that awards qualified scholarships or qualified transportation
6.23 scholarships must, in each year it awards qualified scholarships or qualified transportation
6.24 scholarships to eligible students to enroll in a qualified school, obtain from the qualified
6.25 school documentation that the school:

6.26 (1) complies with all health and safety laws or codes that apply to nonpublic schools;

6.27 (2) holds a valid occupancy permit if required by its municipality;

6.28 (3) certifies that it adheres to the provisions of chapter 363A and United States Code,
6.29 title 42, section 1981; and

6.30 (4) administers the Minnesota Comprehensive Assessment or a foundation approved
6.31 norm-referenced test by providing the foundation a report on student performance on the
6.32 test, including the number of students who opt out of the test, the aggregate test results, and

7.1 the test results disaggregated by student category listed in section 120B.31, subdivision 4,
7.2 unless the cell count data is insufficient to protect student identity.

7.3 A qualified foundation must make the documentation available to the commissioner on
7.4 request, and report student performance on the Minnesota Comprehensive Assessment or
7.5 norm-referenced test, by qualified school, on its website.

7.6 (e) A qualified foundation must, by June 1 of each year following a year in which it
7.7 receives donations, provide the following information to the commissioner:

7.8 (1) financial information that demonstrates the financial viability of the qualified
7.9 foundation;

7.10 (2) documentation that it has conducted criminal background checks on all of its
7.11 employees and board members and has excluded from employment or governance any
7.12 individuals who might reasonably pose a risk to the appropriate use of contributed funds;

7.13 (3) consistent with paragraph (f), document that it has used amounts received as donations
7.14 to provide qualified scholarships, to provide qualified transportation scholarships, to make
7.15 qualified grants, or in support of the mission of one or more public schools or school districts
7.16 of educating students in academics, arts, or athletics, including transportation within one
7.17 calendar year of the calendar year in which it received the donation;

7.18 (4) if the qualified foundation awards qualified scholarships or qualified transportation
7.19 scholarships, a list of qualified schools that enrolled eligible students to whom the qualified
7.20 foundation awarded qualified scholarships;

7.21 (5) if the qualified foundation makes qualified grants, a list of qualified charter schools
7.22 to which the qualified foundation made qualified grants;

7.23 (6) if the qualified foundation is a qualified public school foundation, a list of expenditures
7.24 made in support of the mission of one or more public schools or school districts of educating
7.25 students in academics, arts, or athletics, including transportation; and

7.26 (7) the following information prepared by a certified public accountant regarding
7.27 donations received in the previous calendar year:

7.28 (i) the total number and total dollar amount of donations received from taxpayers;

7.29 (ii) the dollar amount of donations used for administrative expenses, as allowed by
7.30 paragraph (f);

7.31 (iii) if the qualified foundation awarded qualified scholarships, the total number and
7.32 dollar amount of qualified scholarships awarded;

8.1 (iv) if the qualified foundation awarded qualified transportation scholarships, the total
8.2 number and dollar amount of qualified transportation scholarships awarded;

8.3 (v) if the qualified foundation made qualified grants, the total number and dollar amount
8.4 of qualified grants made; and

8.5 (vi) if the qualified foundation is a qualified public school foundation, the total number
8.6 and dollar amount of expenditures made in support of the mission of one or more public
8.7 schools or school districts of educating students in academics, arts, or athletics, including
8.8 transportation.

8.9 (f) The foundation may use up to five percent of the amounts received as donations for
8.10 reasonable administrative expenses, including but not limited to fund-raising, scholarship
8.11 tracking, and reporting requirements.

8.12 Subd. 5. **Responsibilities of commissioner.** (a) The commissioner must make
8.13 applications for an entity to be approved as a qualified foundation for a taxable year available
8.14 on the department's website by August 1 of the year preceding the taxable year. The
8.15 commissioner must approve an application that provides the documentation required in
8.16 subdivision 4, paragraph (b), clauses (1) and (2), within 60 days of receiving the application.
8.17 The commissioner must notify a foundation that provides incomplete documentation and
8.18 the foundation may resubmit its application within 30 days.

8.19 (b) By November 15 of each year, the commissioner must post on the department's
8.20 website the names and addresses of qualified foundations for the next taxable year. The
8.21 commissioner must regularly update the names and addresses of any qualified foundations
8.22 that have been barred from participating in the program.

8.23 (c) The commissioner must prescribe a standardized format for a receipt to be issued by
8.24 a qualified foundation to a taxpayer to indicate the value of a donation received and of a
8.25 commitment to make a donation.

8.26 (d) The commissioner must prescribe a standardized format for qualified foundations
8.27 to report the information required under subdivision 4, paragraph (e).

8.28 (e) The commissioner may conduct either a financial review or audit of a qualified
8.29 foundation upon finding evidence of fraud or misreporting. If the commissioner determines
8.30 that the qualified foundation committed fraud or intentionally misreported information, the
8.31 qualified foundation is barred from further program participation.

8.32 (f) If a qualified foundation fails to submit the documentation required under subdivision
8.33 4, paragraph (c), by June 1, the commissioner must notify the qualified foundation by July

9.1 1. A qualified foundation that fails to submit the required information by August 1 is barred
9.2 from participation for the next taxable year.

9.3 (g) If a qualified foundation fails to comply with the requirements of subdivision 4,
9.4 paragraph (c), the commissioner must by September 1 notify the qualified foundation that
9.5 it has until November 1 to document that it has remedied its noncompliance. A qualified
9.6 foundation that fails to document that it has remedied its noncompliance by November 1 is
9.7 barred from participation for the next taxable year.

9.8 (h) A qualified foundation barred under paragraph (f) or (g) may become eligible to
9.9 participate by submitting the required information in future years.

9.10 Subd. 6. **Special education services.** A student's receipt of a qualified scholarship or
9.11 qualified transportation scholarship does not affect the student's eligibility for instruction
9.12 and service under chapter 125A or otherwise affect the student's status under federal special
9.13 education laws.

9.14 **EFFECTIVE DATE.** This section is effective the day following final enactment for
9.15 donations made and credits allowed in taxable years beginning after December 31, 2021.

9.16 Sec. 5. **PURPOSE STATEMENT; TAX EXPENDITURES.**

9.17 Subdivision 1. **Authority.** This section is intended to fulfill the requirement under
9.18 Minnesota Statutes, section 3.192, that a bill creating, renewing, or continuing a tax
9.19 expenditure provide a purpose for the tax expenditure and a standard or goal against which
9.20 its effectiveness is measured.

9.21 Subd. 2. **Credit providing equity and opportunity in education tax credit.** The
9.22 provisions of section 3, providing a tax credit to expand educational choice, are intended
9.23 to give financial assistance to low-income and middle-income families who seek better
9.24 educational opportunities for their children. The standard against which the effectiveness
9.25 of the credit is to be measured is the total number of eligible students who receive opportunity
9.26 scholarships and better educational opportunities as a result of donations from corporations
9.27 and individuals that qualify for the tax credit.