SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 3637

(SENATE AUTHORS: HANN)

DATE	D-PG	OFFICIAL STATUS
05/22/2016		Introduction and first reading Referred to Jobs, Agriculture and Rural Development

A bill for an act

relating to employment; authorizing family and medical leave savings accounts; providing tax deductions for amounts deposited in family and medical leave savings accounts; exempting amounts deposited from state withholding taxes; providing a family and medical leave savings account tax credit; authorizing grants to small business development centers; appropriating money; amending Minnesota Statutes 2014, sections 290.01, subdivision 19b; 290.06, subdivision 2c; 290.091, subdivision 2; 290.92, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 181; 290.

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

ARTICLE 1

FAMILY AND MEDICAL LEAVE SAVINGS ACCOUNTS

Section 1. **[181.9441] FAMILY AND MEDICAL LEAVE SAVINGS ACCOUNTS.**

Subdivision 1. **Optional savings accounts.** An employer may offer a family and medical leave savings account. Amounts contributed to the account, up to the contribution limit under subdivision 4, are exempt from the tax on withholding from wages under section 290.92, subdivision 1, and allowed as a subtraction under section 290.01, subdivision 19b, clause (22). An employer must contract with a plan administrator to operate the account. Funds in the account may be withdrawn by an employee to offset wages lost due to the employee's absence from work due to family or medical leave taken pursuant to the Family Medical Leave Act under United States Code, title 29, chapter 28, or leave under section 181.941. An employer may contribute matching funds to the employee's account.

Subd. 2. **Unused funds at separation.** Any unused funds in the employee's account at the time of retirement or separation from the employer may be withdrawn by the employee without penalty.

Subd. 3. **Unauthorized withdrawals.** Beneficiaries who withdraw amounts from an account that are not authorized under subdivision 1 or 2 are subject to a penalty as provided in section 290.06, subdivision 2c, paragraph (f).

Subd. 4. **Contribution limit; excess amounts taxable.** Any amounts contributed to an account under subdivision 1 in excess of $6,750 for the year are not exempt from the withholding tax on wages under section 290.92, subdivision 1, and are not allowed to be subtracted under section 290.01, subdivision 19b, clause (22).

Subd. 5. **Inflation adjustment.** The contribution limit in subdivision 4 must be adjusted annually for inflation. The commissioner shall adjust by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code, except that in section 1(f)(3)(B) the word "2016" shall be substituted for the word "1992." For 2017, the commissioner shall then determine the percent change from the 12 months ending on August 31, 2015, to the 12 months ending on August 31, 2016, and in each subsequent year, from the 12 months ending on August 31, 2015, to the 12 months ending on August 31 of the year preceding the taxable year. The contribution amounts as adjusted for inflation must be rounded to the nearest $10 amount. If the amount ends in $5, the amount is rounded up to the nearest $10 amount.

Subd. 6. **Asset protection.** Assets in an account described in this section are not assignable or subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 518.58, 518.581, or 518A.53.

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

Sec. 2. Minnesota Statutes 2014, section 290.01, subdivision 19b, is amended to read:

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

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

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

(3) the amount paid to others, less the amount used to claim the credit allowed under section 290.0674, not to exceed $1,625 for each qualifying child in grades kindergarten to 6 and $2,500 for each qualifying child in grades 7 to 12, for tuition, textbooks, and transportation of each qualifying child in attending an elementary or secondary school situated in Minnesota, North Dakota, South Dakota, Iowa, or Wisconsin, wherein a

resident of this state may legally fulfill the state's compulsory attendance laws, which is not operated for profit, and which adheres to the provisions of the Civil Rights Act of 1964 and chapter 363A. For the purposes of this clause, "tuition" includes fees or tuition as defined in section 290.0674, subdivision 1, clause (1). As used in this clause, "textbooks" includes books and other instructional materials and equipment purchased or leased for use in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state. Equipment expenses qualifying for deduction includes expenses as defined and limited in section 290.0674, subdivision 1, clause (3). "Textbooks" does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to instill such tenets, doctrines, or worship, nor does it include books or materials for, or transportation to, extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or similar programs. No deduction is permitted for any expense the taxpayer incurred in using the taxpayer's or the qualifying child's vehicle to provide such transportation for a qualifying child. For purposes of the subtraction provided by this clause, "qualifying child" has the meaning given in section 32(c)(3) of the Internal Revenue Code;

(4) income as provided under section 290.0802;

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

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

(7) for individuals who are allowed a federal foreign tax credit for taxes that do not qualify for a credit under section 290.06, subdivision 22, an amount equal to the carryover of subnational foreign taxes for the taxable year, but not to exceed the total subnational foreign taxes reported in claiming the foreign tax credit. For purposes of this clause, "federal foreign tax credit" means the credit allowed under section 27 of the Internal Revenue Code, and "carryover of subnational foreign taxes" equals the carryover allowed under section 904(c) of the Internal Revenue Code minus national level foreign taxes to the extent they exceed the federal foreign tax credit;

(8) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19a, clause (7), or 19c, clause (12), in the case of a

shareholder of a corporation that is an S corporation, an amount equal to one-fifth of the delayed depreciation. For purposes of this clause, "delayed depreciation" means the amount of the addition made by the taxpayer under subdivision 19a, clause (7), or subdivision 19c, clause (12), in the case of a shareholder of an S corporation, minus the positive value of any net operating loss under section 172 of the Internal Revenue Code generated for the tax year of the addition. The resulting delayed depreciation cannot be less than zero;

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

(10) to the extent included in federal taxable income, the amount of compensation paid to members of the Minnesota National Guard or other reserve components of the United States military for active service, including compensation for services performed under the Active Guard Reserve (AGR) program. For purposes of this clause, "active service" means (i) state active service as defined in section 190.05, subdivision 5a, clause (1); or (ii) federally funded state active service as defined in section 190.05, subdivision 5b, and "active service" includes service performed in accordance with section 190.08, subdivision 3;

(11) to the extent included in federal taxable income, the amount of compensation paid to Minnesota residents who are members of the armed forces of the United States or United Nations for active duty performed under United States Code, title 10; or the authority of the United Nations;

(12) an amount, not to exceed $10,000, equal to qualified expenses related to a qualified donor's donation, while living, of one or more of the qualified donor's organs to another person for human organ transplantation. For purposes of this clause, "organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow; "human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person; "qualified expenses" means unreimbursed expenses for both the individual and the qualified donor for (i) travel, (ii) lodging, and (iii) lost wages net of sick pay, except that such expenses may be subtracted under this clause only once; and "qualified donor" means the individual or the individual's dependent, as defined in section 152 of the Internal Revenue Code. An individual may claim the subtraction in this clause for each instance of organ donation for transplantation during the taxable year in which the qualified expenses occur;

(13) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19a, clause (8), or 19c, clause (13), in the case of a shareholder of a corporation that is an S corporation, an amount equal to one-fifth of the addition made by the taxpayer under subdivision 19a, clause (8), or 19c, clause (13), in the case of a shareholder of a corporation that is an S corporation, minus the positive value of

any net operating loss under section 172 of the Internal Revenue Code generated for the tax year of the addition. If the net operating loss exceeds the addition for the tax year, a subtraction is not allowed under this clause;

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

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

(16) to the extent included in federal taxable income, discharge of indebtedness income resulting from reacquisition of business indebtedness included in federal taxable income under section 108(i) of the Internal Revenue Code. This subtraction applies only to the extent that the income was included in net income in a prior year as a result of the addition under subdivision 19a, clause (13);

(17) the amount of the net operating loss allowed under section 290.095, subdivision 11, paragraph (c);

(18) the amount of expenses not allowed for federal income tax purposes due to claiming the railroad track maintenance credit under section 45G(a) of the Internal Revenue Code;

(19) the amount of the limitation on itemized deductions under section 68(b) of the Internal Revenue Code;

(20) the amount of the phaseout of personal exemptions under section 151(d) of the Internal Revenue Code; ~~and~~

(21) to the extent included in federal taxable income, the amount of qualified transportation fringe benefits described in section 132(f)(1)(A) and (B) of the Internal Revenue Code. The subtraction is limited to the lesser of the amount of qualified transportation fringe benefits received in excess of the limitations under section 132(f)(2)(A) of the Internal Revenue Code for the year or the difference between the maximum qualified parking benefits excludable under section 132(f)(2)(B) of the Internal Revenue Code minus the amount of transit benefits excludable under section 132(f)(2)(A) of the Internal Revenue Code~~.~~; and

(22) to the extent included in taxable income, amounts deposited in a family and medical leave savings account up to the contribution limit under section 181.9441.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2015.

Sec. 3. Minnesota Statutes 2014, section 290.06, subdivision 2c, is amended to read:

Subd. 2c. **Schedules of rates for individuals, estates, and trusts.** (a) The income taxes imposed by this chapter upon married individuals filing joint returns and surviving spouses as defined in section 2(a) of the Internal Revenue Code must be computed by applying to their taxable net income the following schedule of rates:

(1) On the first $35,480, 5.35 percent;

(2) On all over $35,480, but not over $140,960, 7.05 percent;

(3) On all over $140,960, but not over $250,000, 7.85 percent;

(4) On all over $250,000, 9.85 percent.

Married individuals filing separate returns, estates, and trusts must compute their income tax by applying the above rates to their taxable income, except that the income brackets will be one-half of the above amounts.

(b) The income taxes imposed by this chapter upon unmarried individuals must be computed by applying to taxable net income the following schedule of rates:

(1) On the first $24,270, 5.35 percent;

(2) On all over $24,270, but not over $79,730, 7.05 percent;

(3) On all over $79,730, but not over $150,000, 7.85 percent;

(4) On all over $150,000, 9.85 percent.

(c) The income taxes imposed by this chapter upon unmarried individuals qualifying as a head of household as defined in section 2(b) of the Internal Revenue Code must be computed by applying to taxable net income the following schedule of rates:

(1) On the first $29,880, 5.35 percent;

(2) On all over $29,880, but not over $120,070, 7.05 percent;

(3) On all over $120,070, but not over $200,000, 7.85 percent;

(4) On all over $200,000, 9.85 percent.

(d) In lieu of a tax computed according to the rates set forth in this subdivision, the tax of any individual taxpayer whose taxable net income for the taxable year is less than an amount determined by the commissioner must be computed in accordance with tables prepared and issued by the commissioner of revenue based on income brackets of not more than $100. The amount of tax for each bracket shall be computed at the rates set forth in this subdivision, provided that the commissioner may disregard a fractional part of a dollar unless it amounts to 50 cents or more, in which case it may be increased to $1.

(e) An individual who is not a Minnesota resident for the entire year must compute the individual's Minnesota income tax as provided in this subdivision. After the application of the nonrefundable credits provided in this chapter, the tax liability must then be multiplied by a fraction in which:

(1) the numerator is the individual's Minnesota source federal adjusted gross income as defined in section 62 of the Internal Revenue Code and increased by the additions required under section 290.01, subdivision 19a, clauses (1), (5), (6), (7), (8), (9), and (11) to (14), and reduced by the Minnesota assignable portion of the subtraction for United States government interest under section 290.01, subdivision 19b, clause (1), and the subtractions under section 290.01, subdivision 19b, clauses (8), (9), (13), (14), (16), and (17), after applying the allocation and assignability provisions of section 290.081, clause (a), or 290.17; and

(2) the denominator is the individual's federal adjusted gross income as defined in section 62 of the Internal Revenue Code of 1986, increased by the amounts specified in section 290.01, subdivision 19a, clauses (1), (5), (6), (7), (8), (9), and (11) to (14), and reduced by the amounts specified in section 290.01, subdivision 19b, clauses (1), (8), (9), (13), (14), (16), and (17).

(f) The tax imposed by this section on a beneficiary of an account under section 181.9441, for any taxable year in which there is an unauthorized withdrawal from the beneficiary's account which is not allowed under section 181.9441, subdivision 1 or 2, shall be increased by 20 percent of the amount of the unauthorized withdrawal includable in gross income as defined in section 61 of the Internal Revenue Code.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2015.

Sec. 4. **[290.0682] FAMILY AND MEDICAL LEAVE SAVINGS ACCOUNT CREDIT.**

Subdivision 1. **Credit allowed.** (a) An individual is allowed a credit against the tax imposed under this chapter equal to the difference of:

(1) the individual's federal income tax liability for the taxable year if contributions to a family and medical leave savings account up to the contribution limit under section 181.9441 were included in gross income under section 61 of the Internal Revenue Code; and

(2) the individual's federal income tax liability for the taxable year if contributions to a family and medical leave savings account up to the contribution limit under section 181.9441 were not included in gross income under section 61 of the Internal Revenue Code.

(b) In no case may the credit be less than zero.

(c) For a nonresident or a part-year resident, the credit must be allocated based on the percentage calculated under section 290.06, subdivision 2c, paragraph (e).

Subd. 2. **Credit to be refundable.** If the amount of the credit that a taxpayer who is a resident or part-year resident of Minnesota is eligible to receive under this section exceeds the taxpayer's tax liability under this chapter, the commissioner shall refund the excess to the taxpayer. For nonresident taxpayers, the credit may not exceed the taxpayer's liability for tax under this chapter.

Subd. 3. **Appropriation.** An amount sufficient to pay the refunds required by this section is appropriated to the commissioner from the general fund.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2015.

Sec. 5. Minnesota Statutes 2014, section 290.091, subdivision 2, is amended to read:

Subd. 2. **Definitions.** For purposes of the tax imposed by this section, the following terms have the meanings given:

(a) "Alternative minimum taxable income" means the sum of the following for the taxable year:

(1) the taxpayer's federal alternative minimum taxable income as defined in section 55(b)(2) of the Internal Revenue Code;

(2) the taxpayer's itemized deductions allowed in computing federal alternative minimum taxable income, but excluding:

(i) the charitable contribution deduction under section 170 of the Internal Revenue Code;

(ii) the medical expense deduction;

(iii) the casualty, theft, and disaster loss deduction; and

(iv) the impairment-related work expenses of a disabled person;

(3) for depletion allowances computed under section 613A(c) of the Internal Revenue Code, with respect to each property (as defined in section 614 of the Internal Revenue Code), to the extent not included in federal alternative minimum taxable income, the excess of the deduction for depletion allowable under section 611 of the Internal Revenue Code for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year);

(4) to the extent not included in federal alternative minimum taxable income, the amount of the tax preference for intangible drilling cost under section 57(a)(2) of the Internal Revenue Code determined without regard to subparagraph (E);

(5) to the extent not included in federal alternative minimum taxable income, the amount of interest income as provided by section 290.01, subdivision 19a, clause (1); and

(6) the amount of addition required by section 290.01, subdivision 19a, clauses (7) to (9), and (11) to (14);

less the sum of the amounts determined under the following:

(1) interest income as defined in section 290.01, subdivision 19b, clause (1);

(2) an overpayment of state income tax as provided by section 290.01, subdivision 19b, clause (2), to the extent included in federal alternative minimum taxable income;

(3) the amount of investment interest paid or accrued within the taxable year on indebtedness to the extent that the amount does not exceed net investment income, as defined in section 163(d)(4) of the Internal Revenue Code. Interest does not include amounts deducted in computing federal adjusted gross income;

(4) amounts subtracted from federal taxable income as provided by section 290.01, subdivision 19b, clauses (6), (8) to (14), (16), ~~and~~ (21), and (22); and

(5) the amount of the net operating loss allowed under section 290.095, subdivision 11, paragraph (c).

In the case of an estate or trust, alternative minimum taxable income must be computed as provided in section 59(c) of the Internal Revenue Code.

(b) "Investment interest" means investment interest as defined in section 163(d)(3) of the Internal Revenue Code.

(c) "Net minimum tax" means the minimum tax imposed by this section.

(d) "Regular tax" means the tax that would be imposed under this chapter (without regard to this section and section 290.032), reduced by the sum of the nonrefundable credits allowed under this chapter.

(e) "Tentative minimum tax" equals 6.75 percent of alternative minimum taxable income after subtracting the exemption amount determined under subdivision 3.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2015.

Sec. 6. Minnesota Statutes 2014, section 290.92, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (1) **Wages.** For purposes of this section, the term "wages" means the same as that term is defined in section 3401(a) and (f) of the Internal Revenue Code, but does not include amounts deposited in a family and medical leave savings account up to the contribution limit under section 181.9441.

(2) **Payroll period.** For purposes of this section the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by the employee's

employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(3) **Employee.** For purposes of this section the term "employee" means any resident individual performing services for an employer, either within or without, or both within and without the state of Minnesota, and every nonresident individual performing services within the state of Minnesota, the performance of which services constitute, establish, and determine the relationship between the parties as that of employer and employee. As used in the preceding sentence, the term "employee" includes an officer of a corporation, and an officer, employee, or elected official of the United States, a state, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(4) **Employer.** For purposes of this section the term "employer" means any person, including individuals, fiduciaries, estates, trusts, partnerships, limited liability companies, and corporations transacting business in or deriving any income from sources within the state of Minnesota for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer," except for purposes of paragraph (1), means the person having control of the payment of such wages. As used in the preceding sentence, the term "employer" includes any corporation, individual, estate, trust, or organization which is exempt from taxation under section 290.05 and further includes, but is not limited to, officers of corporations who have control, either individually or jointly with another or others, of the payment of the wages.

(5) **Number of withholding exemptions claimed.** For purposes of this section, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under subdivision 5, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2015.

ARTICLE 2

VOLUNTARY FAMILY AND MEDICAL LEAVE ASSISTANCE GRANTS

Section 1. **VOLUNTARY PAID FAMILY AND MEDICAL LEAVE ASSISTANCE GRANT PROGRAM.**

$....... in fiscal year 2017 is appropriated from the general fund to the commissioner of employment and economic development for grants to small business development centers (SBDCs) under Minnesota Statutes, section 116J.68, to provide information and technical assistance to Minnesota businesses interested in implementing private paid family, medical, pregnancy, or bonding leave programs. Services under this section may be provided directly by an SBDC or under contracts with nonprofit organizations with expertise in advising businesses on labor and employment issues.

APPENDIX
Article locations in 16-7667