

# 2011 CORPORATE FRANCHISE TAX, INDIVIDUAL INCOME TAX, AND ESTATE TAX LEGISLATIVE BULLETIN (2011 Regular Session)

MINNESOTA • REVENUE

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Unless otherwise noted, the provisions discussed in this bulletin can be found in 2011 Minn. Laws, Chapter 112.

## Corporate Franchise Tax

**Corporate franchise tax and sales tax refund delay.** 2010 Minn. Laws, Chapter 1, Article 13, Section 6, was repealed. That law directed the commissioner of revenue to delay paying \$152 million in corporate franchise tax and sales tax refunds (both regular refunds and capital equipment refunds) until July 1, 2011. Under the repeal, these refunds may be paid in fiscal year 2011, instead of fiscal year 2012. Effective March 22, 2011. 2011 Minn. Laws, Chapter 8, Section 8.

## Individual Income and Withholding Taxes

**Angel investment credit – pay to interns and prior equity investment limitations.** Minn. Stat. § 116J.8737, subs. 1 and 2, were amended to define “intern” for purposes of the angel investment tax credit to generally mean a student, or recent graduate, of an institute of higher learning, employed for no more than nine months and performing services that provide training and experience in the primary business activity of the business. Also requires businesses to pay interns a minimum wage of at least 175% of the federal minimum wage (rather than 175% of the federal poverty rate for a family of four which was the previous minimum.). Also raises from \$2 million to \$4 million the amount of private equity a business can raise and still be eligible to seek investments eligible for the angel credit. Effective retroactively from January 1, 2011.

**Angel investment credit – definition of qualified fund.** Minn. Stat. § 116J.8737, subd. 4, was amended to define a fund eligible to seek credits as a flow through entity with at least three natural persons as investors. The effect of this change is to allow funds to seek credits for individual members of the fund even if the fund also includes some members who are not natural persons, and who thus are not eligible to claim credits, as long as there are at least three natural persons as investors. Effective retroactively from January 1, 2011.

**Additional tax charge abatement.** Minn. Stat. § 270C.34, subd. 1, was amended to allow the commissioner to abate the additional tax charge imposed on individuals, corporations, trusts, S corporations and partnerships for reasonable cause. Effective for taxable years beginning after December 31, 2010.

**Filing requirements for active duty members of military.** Minn. Stat. § 289A.08, subd. 1, was amended to permit Minnesota residents to exclude active duty military pay for services performed in Minnesota when determining if they have met the Minnesota individual income tax filing requirements. Under current law, only income from active duty pay for services performed outside Minnesota is excluded in determining the Minnesota filing requirement. Effective for taxable years beginning after December 31, 2010.

**Composite estimated tax.** Minn. Stat. § 289A.08, subd. 7, was amended to alleviate a beneficiary, shareholder or partner's liability for estimated payments when the trust, S corporation or partnership pays composite estimated tax under section 289A.25. Effective for taxable years beginning after December 31, 2010.

**Third party payers of sick pay.** Minn. Stat. § 289A.12 was amended by adding a new subdivision 7 to require certain third party payers of sick pay to file an annual report with the commissioner of revenue. The report must include the names and identification numbers of employers for whom the third party is making sick pay payments and the names and social security numbers of the employees who received sick pay and the amount of sick pay paid and tax withheld. The report is due by March 1 of the year following the year that the sick pay is paid. The requirement only applies to third party payers who withhold income tax and remit it to the Department of Revenue under the third party's withholding tax account, but who then permit the employer to include the taxes withheld at the end of the year on the W-2 issued by the employer to the employee. Effective for benefits paid after December 31, 2010.

**Estimated tax pass-through entities.** Minn. Stat. § 289A.25, subd. 1, was amended to require trusts, S corporations and partnerships to pay estimated tax if the sum of the taxes imposed under Minn. Stat. ch. 290 and composite tax exceeds \$500. Effective for taxable years beginning after December 31, 2010.

**Estimated tax first-year exception.** Minn. Stat. § 289A.25, subd. 6, was amended to make the first-year exception from the additional tax charge the same for trusts, S corporations and partnerships. Effective for taxable years beginning after December 31, 2010.

**Estimated tax short taxable year.** Minn. Stat. § 289A.25, was amended by adding subdivision 14, to clarify the method for paying estimated tax when a trust, S corporation or partnership has a short taxable year of less than 12 months, but at least 4 months. Effective for taxable years beginning after December 31, 2010.

**Estimated tax S corporations.** Minn. Stat. § 289A.26, subd. 1, was amended to move the liability for S corporations to pay estimated tax from section 289A.26 to section 289A.25. Effective for taxable years beginning after December 31, 2010.

**Minnesota municipal bond exclusion.** Minn. Stat. § 289A.50, subd. 10, was amended to provide that if a court finds Minnesota's law allowing an exclusion from income for Minnesota municipal bond interest but not for bonds of another state to be a violation of the commerce clause, the proposed legislative remedy of making interest from Minnesota bonds taxable applies only to interest from the type of bonds that the court decision applies to rather than to interest from all Minnesota municipal bonds. Effective June 1, 2011.

**Individual income tax net operating losses.** Several clarifying amendments affect individual income taxpayers, estates and trusts who elect to carryback net operating losses generated in 2008 or 2009 for three, four or five years, as allowed federally under the Worker, Homeownership and Business Assistance Act of 2009. Minnesota law was amended in 2010 to allow those losses to be carried back for two years for Minnesota purposes, with unused losses carried forward for up to twenty years.

These changes are:

- Minn. Stat. § 290.01, subd. 19a, was amended requiring an addition to federal taxable income for deductions allowed in the computation of federal taxable income that are attributable to net operating losses which the taxpayer carried back for federal purposes.
- Minn. Stat. § 290.01, subd. 19b, was amended allowing a subtraction from federal taxable income for the net operating losses allowed under Minn. Stat. § 290.095, subd. 11 (c). These are losses which the taxpayer carried back for federal purposes.
- Minn. Stat. § 290.06, subd. 2c, was amended to modify the formula used to determine the tax of nonresidents and part year residents by changing the numerator of the fraction by the Minnesota portion of the addition to federal taxable income and the subtraction from federal taxable income attributable to net operating losses which the taxpayer carried back for federal purposes. Also changes the denominator of the fraction by the total addition and subtraction from federal taxable income attributable to those net operating losses.
- Minn. Stat. § 290.091, subd. 2, was amended to require an addition in the computation of alternative minimum taxable income equal to the deductions allowed in the computation of federal taxable income that are attributable to net operating losses which the taxpayer carried back for federal purposes. Also allows a subtraction in the computation of alternative taxable income equal to the net operating loss allowed under Minn. Stat. § 290.095, subd. 11, paragraph (c).
- Minn. Stat. § 290.095, subd. 11, was amended to allow a net operating loss deduction equal to the greater of taxable net income or alternative minimum taxable income.

All of the changes are effective retroactively for losses generated in taxable years beginning after December 31, 2007.

**Active duty military pay earned in Minnesota.** Minn. Stat. § 290.01, subd. 19b, paragraphs (10), (11) and (14), was amended to clarify that Minnesota residents are allowed to subtract compensation paid for active duty military service performed in Minnesota only once in computing their Minnesota net income. Effective June 1, 2011.

**JOBZ minimum fee exemption and definitions.** Minn. Stat. § 290.0922, subd. 2, was amended to clarify that the exemption from the minimum fee imposed on corporations and partnerships is available only to qualified businesses that have all of their property and payroll located in a job opportunity building zone. Effective June 1, 2011.

Minn. Stat. § 290.0922, subd. 3, was amended to clarify that only a qualified business can exclude zone property and payroll for purposes of determining the minimum fee. Effective June 1, 2011.

### **Estate Tax**

**Estate tax return due date.** Minn. Stat. § 289A.18, subd. 3, was amended to conform Minnesota's return due date to the federal return due date for decedents dying after December 31, 2009 and before December 17, 2010. For those estates, a Minnesota estate tax return is due fifteen months

after date of death or on September 19, 2011, whichever is later. This is a filing extension only. Effective for estates of decedents dying after December 31, 2009.

**Notification.** Minn. Stat. § 289A.35, paragraph (b), was added to require the commissioner to notify the estate within 9 months of an estate tax return being filed whether the return is under examination or has been processed as final. Effective for estates of decedents dying after December 31, 2010.

**Estate tax audit period.** Minn. Stat. § 289A.38, subd. 3 was repealed and Minn. Stat. § 289A.38, subd. 5 was amended, extending the general 3-1/2 year assessment period to estate tax returns. Effective for estates of decedents dying after December 31, 2010.

**Minnesota qualified terminable interest property (QTIP).** Minn. Stat. § 291.03, subd. 1b, was amended to maintain an irrevocable QTIP election on the Minnesota estate tax return for estates of 2010 decedents if the estate opts-out of the federal estate tax. All other estates may make a QTIP election on a federally filed, estate tax return, which will then be followed by Minnesota. Effective for estates of decedents dying after December 31, 2009.