2010 CORPORATE FRANCHISE, INDIVIDUAL INCOME, AND ESTATE TAX LEGISLATIVE BULLETIN

(2010 Regular and First Special Session)

MINNESOTA · REVENUE

Appeals and Legal Services Division
600 North Robert Street
Saint Paul, Minnesota 55146-2220

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Unless otherwise noted, the provisions discussed in this bulletin can be found in 2010 Minn. Laws, Chapter 389.

Political checkoff certifications. Minn. Stat. §§ 10A.31, subd. 6 and 10A.321 were amended to change the dates by which Revenue is required to certify political party income tax and property tax refund checkoff information to the campaign finance and public disclosure board. The changes were necessitated when the state primary election was changed from the second Tuesday after Labor Day to the second Tuesday in August. As a result, the commissioner must certify to the board thirteen weeks before the primary an estimate of the total amount in the state general account of the state elections campaign fund and the amount of money each eligible candidate may receive from the candidate's party account in the state elections campaign fund. Formerly this estimate was due by July 1. Additionally, the commissioner must certify actual checkoff amounts to the board one week before the primary. Formerly this certification was due on September 1. Effective March 4, 2010. 2010 Minn. Laws, Chapter 184.

Small Business Investment Credit (Angel Investor Credit). Minn. Stat. § 13.4967 was amended, and Minn. Stat. §§ 116J.8737 and 290.0692 were enacted, to allow qualified investors a refundable credit against the individual income tax imposed under Minn. Stat. ch. 290, for qualified investments made in qualified small businesses during a taxable year. A qualified investor is a natural person that satisfies the conditions of Minn. Stat. § 116J.8737, subd. 3(c). A qualified fund is a pass-through entity with at least three separate investors, all of whom satisfy the conditions of Minn. Stat. § 116J.8737, subd. 3(c). A qualified small business is a business that satisfies the condition of Minn. Stat. § 116J.8737, subd. 2(c). A qualified investment is a cash investment of at least $10,000 if made by a qualified investor, or $30,000 if made by a qualified fund.

The tax credit equals 25% of a qualified investment, subject to certain allocation limitations. First, for 2010, the Department of Employment and Economic Development (DEED) may not allocate more than $11,000,000 in tax credits; for subsequent years, the credit limit is $12,000,000; but for 2013, the credit limit is $11, 900,000. Second, DEED cannot allocate more than $125,000 in credits during a taxable year to a particular qualified investor; for married couples filing jointly the yearly allocation limit is $250,000. Third, DEED cannot allocate more than $1,000,000 in credits for total qualified investments made in a particular qualified business. Fourth, DEED cannot allocate any tax credits to a qualified investor who receives more than 50% of their gross income from the qualified small business in which the qualified investment is proposed.

To be eligible for a credit, the investor, or fund, making an investment, and the small business receiving an investment, must have received certification for the calendar year before closing on a qualified investment. For taxable year 2010, DEED will make the certification application available on DEED’s website by August 1, 2010; for following years, DEED will make the certification application available by November 1 of the preceding year.

Before a qualified investor is allowed a credit, DEED must have, first, allocated the credit to the qualified investor, and, second, issued the investor a credit certificate. For 2010, DEED will make the allocation application available on the DEED's website by September 10, 2010, and will begin accepting applications on that date; for following years, DEED will make the allocation application available by November 1 of the preceding year. DEED will allocate credits in the order in which DEED receives allocation applications. Credit certificates must state that the tax credit is revocable if (1) the qualified investor or qualified fund fails to hold the qualified investment for three years, or (2) the qualified small business violates certain employment and payroll standards in any of the five years after the business received the qualified investment.

By February 1 of each year, qualified investors, funds, and small businesses must each file annual reports with DEED, certifying that they satisfy continuing eligibility requirements. Failure to file an annual report can result in a $500 fine.

By December 31, 2012, the commissioner must contract with a qualified outside entity or individual to evaluate the effects of the small business investment tax credit on the Minnesota economy. The contractor must not be associated with the venture capital, angel investment, life science, or high technology industries. $100,000 is appropriated for this study, and part of the appropriation can be expended on a consultant or consultants to prepare all or part of the study.

The program expires for tax years beginning after December 31, 2014.

Effective May 28, 2010 and for qualified investments made after July 1, 2010.

Rent refund of manufactured home owners in a manufactured home park cooperative. Minn. Stat. § 273.124, subd. 3a, was amended to provided that persons living in a manufactured home park cooperative are generally not allowed to use the tax on the land that their home is situated on when determining their property tax refund. Effective for taxes payable in 2011.

Threshold lowered for income tax preparers electronic filing requirements. Amendment to Minn. Stat. § 289A.08, subd. 16. The current threshold for tax preparers being required to electronically file income tax returns they prepare is if they prepared more than 100 returns in the previous year. The threshold is reduced to 10 returns, to conform to the new federal law that was recently enacted requiring tax preparers to file federal income tax returns electronically. 2010 Minn. Laws, Chapter 215, Article 12, Section 29. Effective for tax returns filed after December 31, 2010.

Electronic filing of withholding statements. Minn. Stat. § 289A.09, subd. 2, was amended to clarify that all statements (such as W-2 or 1099's issued by construction contractors with Minnesota withholding) required to be submitted for taxes withheld under Minn. Stat. § 290.92, are aggregated in determining whether the electronic reporting threshold is met. Additionally, obsolete language related to electronic filing thresholds for prior years was repealed. Effective for statements required to be filed after December 31, 2010.

Due date of return of regulated investment companies. Minn. Stat. § 289A.12, subd. 14, was amended to provide that the return which regulated investment companies that pay municipal bond interest file with the department, must be filed by June 1. Also changes the due date for the issuance of statements by those regulated investment companies to their investors to February 15 to coincide with a federal due date. Effective for returns due after December 31, 2010.

Corporate franchise tax return due dates. Minn. Stat. § 289A.18, subd. 1, was amended to conform the due dates for a corporate franchise tax calendar, fiscal year, or short period return to the federal due dates. Effective for taxable years beginning after December 31, 2009.

Refunds payable when taxpayer address is invalid. Minn. Stat. § 289A.50, subd. 4, was amended so that the notification of refund (which is required under current law) will stop the running of interest and will be the date that starts the period for issuance of new property tax refund warrants if the Department of Revenue determines that the address the taxpayer used to file the refund claim is invalid or no longer current. Effective May 28, 2010.

Frivolous return penalty. Minn. Stat. § 289A.60, subd. 7, was amended to use consistent terms throughout the provision, applying the penalty to a "taxpayer." Effective for returns filed after May 28, 2010.

Municipal bond interest paid by a regulated investment company. Minn. Stat. § 290.01, subd. 19a, was amended to clarify that the addition for federally exempt municipal bond interest paid by a regulated investment company does not require the inclusion of interest exempt from state taxation by operation of federal law, such as interest paid on obligations of a U.S. territory. Also clarifies that any interest from municipal bonds that is exempt from state taxation under the laws of the United States is treated as tax-exempt interest for purposes of determining whether 95% of the dividends paid by the regulated investment company are paid from obligations issued by Minnesota. Effective May 28, 2010.

Small ethanol producer obsolete subtraction. Minn. Stat. § 290.01, subd. 19b, was amended by deleting paragraph (7) and subd. 19d by deleting paragraph (15) which provided for a subtraction from federal taxable income for the amount of the federal small ethanol producer credit in determining net income for Minnesota individual and corporate franchise tax. The subtractions for the small ethanol producer credit applied for taxable years beginning before January 1, 2008. Corresponding cross reference changes were made to Minn. Stat §§ 289A.08, subd. 7, 290.06, subd. 2c, 290.067, subd. 1, 290.0671. subd. 1, 290.091, subd. 2 and 290.0921, subd. 3. Effective May 28, 2010.

Individual income tax, nexus rules for single-member LLCs. Amends Minn. Stat. § 290.014, subd. 2, by adding subpart 6, providing that for a single-member limited liability company (LLC), which the individual owner has elected to disregard status for individual income tax purposes and which has income that is assigned to Minnesota, the income is taxed as though it was received directly by the individual, rather than by the LLC. Effective May 28, 2010.

Political contribution refund temporarily discontinued. The political contribution refund under Minn. Stat. § 290.06, subd. 23, is temporarily discontinued for contributions made after June 30, 2009 and before July 11, 2011. 2010 Minn. Laws, First Special Session, Chapter 1, Article 13, Section 4, Subdivision 1.

Credit for increasing research activities. Minn. Stat. § 290.068 was amended:

1) to increase the credit to ten percent of the first $2 million of the excess of qualified research expenses over the base amount;
2) to permit partners in partnerships and S corporation shareholders to claim the credits as a flow-through from the partnerships or S corporations;
3) to allow the credit to be claimed against all Minn. Stat. ch. 290 taxes; and

4) for qualified research expenses in taxable years beginning after December 31, 2009, the increasing research credit is a refundable credit. The credit allowed for qualified research expenses incurred in taxable years beginning after December 31, 2009 must be used before research credits earned before January 1, 2010.

Effective for taxable years beginning after December 31, 2009.

Credit for historic structure rehabilitation. Minn. Stat. § 290.0681 was enacted, and Minn. Stat. § 297I.20 was amended, to allow private developers and insurance companies an assignable, refundable tax credit for rehabilitating certified historic structures. The rehabilitation tax credit cannot exceed 100% of the tax credit allowed under section 47(a)(2) of the Internal Revenue Code. In lieu of the rehabilitation tax credit, the Minnesota Historical Society may pay a grant equal to 90% of the anticipated federal tax credit associated with a project, or offer a combination of a grant and the tax credit.

To qualify for the rehabilitation tax credit or a grant, a developer of a rehabilitation project must file an application with the State Historical Preservation Office (Office) before beginning the project. Upon approving an application, the Office will issue the applicant an allocation certificate. Once a project is put in service, and allowed a federal tax credit under section 47(a)(2) of the Internal Revenue Code, the Office will issue the applicant a credit certificate, a grant, or a combination of the two.

The rehabilitation tax credit expires after fiscal year 2015, except the Office may issue credit certificates through 2018, based on the allocation certificates the Office issues before fiscal year 2016. Effective for taxable years beginning after December 31, 2009, for certified historic structures for which qualified costs of rehabilitation are first paid under construction contracts entered into after May 1, 2010.

Wisconsin reciprocity payment authority. Minn. Stat. § 290.081 was modified to allow the commissioner additional flexibility regarding the reimbursement by Wisconsin for Minnesota's revenue loss resulting from a reciprocity agreement. In particular, the commissioner is authorized to enter into an agreement with Wisconsin that allows for Minnesota losses to be determined either before or after the allowance of each state's credit for taxes paid to the other state. Effective July 1, 2010.

Alternative Minimum Tax Cross Reference Corrected. Minn. Stat. § 290.0921, subd. 3a, was amended to correct a cross reference from 60A.15, subdivision 1 to 297I.05, subdivisions 1 to 5 (companies that are exempt from the alternative minimum tax because they pay the insurance premium tax). Minn. Stat. § 60A.15, subd. 1, was recodified and its provisions moved to 297I.05, subdivisions 1 to 5. 2010 Minn. Laws, Chapter 382, Section 60.

Income tax, allocation rules for single-member LLCs. Amends Minn. Stat. § 290.17, subd. 2, which generally provides for the assignment of income and gains from intangible personal property not otherwise employed in a trade or business if the recipient is a Minnesota nonresident, to provide that the capital gain on the sale of a single-member limited liability company (LLC) that is disregarded for federal income tax purposes is allocated to Minnesota and taxed as if the LLC did not exists. Effective May 28, 2010.

Property tax refunds temporarily reduced. The percent of rent paid in a calendar year to determine the allowable amount of rent constituting property taxes and the percent of the rent paid portion of property taxes payable for mobile homes under, Minn. Stat. § 290A.03, subds. 11 and 13, respectively, is temporarily reduced from 19% to 15%. This reduction is only for property tax refunds based on rent paid during calendar year 2009, and for property tax refunds based on property taxes payable in 2010 that include gross rent paid in 2009. 2010 Minn. Laws, First Special Session, Chapter 1, Article 13, Section 4, Subdivision 2.

Create Automotive Recovery Zone. Minn. Stat. §§ 469.310, .312, .314, .315 were amended, and Minn. Stat. § 469.3181 was enacted, to allow a business engaged in the assembly of motor vehicles at a create automotive recovery (CAR) zone to take advantage of certain JOBZ tax incentives, and the new refundable tax credit under Minn. Stat. § 469.3181. The tax credit equals $2,500 per full-time equivalent employee who receives wages from the business for working at a motor vehicle assembly facility, plus an additional $1,000 for such employees in excess of 750. A CAR zone means a zone designated by the commissioner of employment and economic development (commissioner), which contains a motor vehicle assembly facility. The commissioner, in consultation with the commissioner of revenue, may designate not more than one CAR zone. The commissioner will receive applications for CAR zone designation at any time before January 1, 2016, and may designate a CAR zone at any time between December 31, 2011 and January 1, 2016, as long as the applicant has executed a business subsidy agreement with a business that has committed to making a capital investment of at least $100,000,000 to improve or retrofit a motor vehicle assembly facility located in the CAR zone. The duration of a CAR zone is twelve years from the date of designation. Effective April 2, 2010, but the tax incentives and credit are effective for taxable years beginning after December 31, 2011.

Delayed payment of sales and corporate franchise tax refunds. The commissioner of revenue is directed to delay the payment of a sufficient number of sales and corporate franchise tax refunds so that $152,000,000 that would otherwise be paid during fiscal year 2011 is not paid until fiscal year 2012. This amount is in addition to $63 million in capital equipment refunds and $42 million of corporate franchise tax refunds, payment of which is being delayed until July 1, 2012 pursuant to the June 2009 unallotment announcements. The commissioner is also directed to minimize the amount of interest payable, where possible and administer this section to create the least adverse effect on tax administration and taxpayer compliance. Effective July 1, 2010. 2010 Minn. Laws, First Special Session, Chapter 1, Article 13, Section 6.

Repeal of lower income motor fuels refund. Minn. Stat. § 290.06, subd. 34, which provided a $25 refundable income tax credit to lower income taxpayers, was repealed effective for taxable years beginning after December 31, 2009.

Estate Tax

Estate tax return requirement. Effective for decedents dying after December 31, 2005, Minn. Stat. § 289A.10, subd. 1, was amended to strike obsolete language relating to pre-2006 filing requirements. Effective the day following final enactment regardless of a decedent’s date of death, Minn. Stat. § 291.005, subd. 1(2), was amended to provide that the reference to the Internal Revenue Code for estate tax purposes disregards the 2010 repeal of the federal estate tax. Together, these amendments clarify that a Minnesota estate tax return is required to be filed if (1) a federal estate tax return is required to be filed or (2) the gross estate exceeds $1 million.

Paying estate tax in installments. Minn. Stat. § 289A.30, subd. 2, was amended by clarifying that taxpayers electing to pay estate tax in installments must defer a percentage of Minnesota tax that does not exceed the percentage of federal estate tax deferred. Effective May 28, 2010.

Qualified terminable interest property (QTIP) election. Minn. Stat. § 291.03 was amended by adding subdivision 3, which allows the executor of an estate to make an irrevocable QTIP election on the Minnesota estate tax return for decedents dying in 2010. If the election is made on the Minnesota return, it cannot reduce the taxable estate below $3.5 million. If a federal estate tax return were to be filed, then the Minnesota QTIP election would not be allowed. In that case, Minnesota would recognize a QTIP election only if made on the federal estate tax return. Effective for estates of decedents dying after December 31, 2009.

Interpreting formula clauses in probate for 2010 decedents. Minn. Stat. § 524.2-712 was enacted to provide that if a will or other governing instrument for a decedent dying in 2010 makes reference to federal estate tax code or generation-skipping tax code, it is deemed to refer to the tax laws as they applied to a decedent dying on December 31, 2009. If the federal estate tax or federal generation-skipping tax becomes effective during 2010, then this section shall not apply for those decedents who die after the federal tax becomes effective. Effective retroactive to January 1, 2010.

Federal Update

Overview

Minnesota income and franchise tax is based on "federal taxable income" (FTI) for regular Minnesota tax purposes; "federal alternative minimum taxable income" (AMTI) for Minnesota alternative minimum taxable income; "federal adjusted gross income" (FAGI) for household income used for the Minnesota dependent care credit, education credit, and property tax refund; and "earned income" for the working family credit.

Current Minnesota law references these federal concepts as amended through March 31, 2009. Since that date, Congress has not passed any major tax bills, however, several laws have been enacted that make modifications to the Internal Revenue Code. Tax provisions were included in:

The Consumer Assistance to Recycle and Save Program, which was passed as part of P.L. 111-32, signed into law on June 24, 2009.

The Worker, Homeownership, and Business Assistance Act, P.L. 111-92 signed into law on November 6, 2009;

Public Law 111-126 which provided for accelerated deductibility of cash contributions to aid in Haitian earthquake relief and was signed into law on January 21, 2010, and

The Hiring Incentives to Restore Employment Act, P.L. 111-147, which was signed into law on March 18, 2010.

Most of the provisions were made applicable to the calculation of 2009 tax.

The only change not being adopted is one that allows individuals, estates and trusts the ability to carry back net operating losses generated in 2009 for 3, 4 or 5 years. The Minnesota treatment of these losses is covered in changes to Minn. Stat. § 290.095.

Federal update to Minnesota administrative provisions. Minn. Stat. § 289A.02, subd. 7, was amended to incorporate the federal administrative provisions as defined in the Internal Revenue Code through March 18, 2010. While effective April 2, 2010, this does not have any substantive effect. 2010 Minn. Laws, Chapter 216, Section 7.

NOTE: The legislature did not adopt, or specifically reject provisions contained in the Patient Protection and Affordable Care Act, enacted March 23, 2010.

Minnesota net income. Minn. Stat. § 290.01, subd. 19, was amended to adopt all of the changes made to federal taxable income since March 31, 2009 and through March 18, 2010. The changes include:

Exclusion from income by car and truck buyers for $3,500 or $4,500 payments made by the federal government when the buyer traded in an old, fuel inefficient vehicle under the Cash for Clunkers program, which was in effective during the summer of 2009.

Exclusion for certain payments made by the Department of Defense under its Homeowner Assistance Program ("HAP") to service members forced to relocate by the military between February 1, 2006 and September 30, 2010. The payments compensate the member or employee for up to 95% of the drop in the fair market value of their principal residence that occurred as a result of the general decline in the United States housing market.

Taxpayers who make cash contributions for Haitian earthquake relief from January 11, 2010 through March 1, 2010 may elect to deduct those contributions on their 2009 return rather than on their 2010 return. 2010 Minn. Laws, Chapter 187.

An increase in the allowable Section 179 expensing of property acquired by small businesses. The allowable maximum expensing is increased from $134,000 to $250,000. The maximum allowable expensing is reduced dollar for dollar by the amount of assets acquired in the year in excess of $800,000. This phase out threshold was increased from $530,000. The expansion of the Section 179 expensing applies only to assets placed in service in 2010. However, Minnesota will continue to treat this Section 179 expansion as it has treated other recent versions of federal Section 179 expansion. The additions and subtractions dealing with this type of Section 179 expensing are already part of permanent Minnesota law and therefore were not amended.

Minnesota charitable contribution subtraction. Minn. Stat. § 290.01, subd. 19b, was amended to allow individuals who do not itemize deductions federally the election to include Haitian earthquake relief cash contributions as part of their 2009 contributions when determining their Minnesota charitable contribution deduction. 2010 Minn. Laws, Chapter 187.

Update of credits, wages and individual alternative taxable income. Minn. Stat. § 290.01, subd. 31, was amended to incorporate federal changes made through March 18, 2010, which impact Minnesota tax provisions that are not part of the computation of regular tax.

For alternative minimum tax the new changes to federal adjusted gross income incorporated into the definition of net income will apply to the computation of Minnesota alternative taxable income.

The definition of "income" for purposes of the Minnesota dependent care credit and the education credit will also adopt the new changes to federal adjusted gross income incorporated into the definition of net income.

All of these changes are effective for Minnesota purposes at the same time as they became effective federally.

Net operating losses. Minn. Stat. § 290.095, subd. 11, was amended to address net operating loss carryovers of individuals, estates and trusts that elect, for federal purposes, a three, four or five year carryback of net operating losses generated in tax years ending after December 31, 2007 and starting before January 1, 2010, as allowed under Internal Revenue Code § 172(b)(1)(H), as amended federally in November 2009.

For Minnesota purposes, these losses will be allowed as a carryback against taxable net income for two years. Any remaining losses are a carryover against taxable net income for twenty years.

This change does not apply to qualified small businesses that made the election allowed under the changes made in the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5) , which was signed into law in February 2009, and which was adopted into Minnesota law during the 2009 Legislative Session. This applies to net operating losses taken for tax years ending after December 31, 2007 and before January 1, 2010.

Household income for the property tax refund. Minn. Stat. § 290A.03, subd. 15, was amended to adopt the federal changes made through March 18, 2010 that affect household income, which uses the definition of federal adjusted gross income as a starting point. Effective for refunds based on property taxes payable after December 31, 2009 and rent paid after December 31, 2008.

Federal update of estate tax. Minn. Stat. § 291.005, subd. 1, was amended to move the date through which Minnesota incorporates the federal estate tax to March 18, 2010. This change, which is effective April 2, 2010, does not have any substantive effect.