

MINNESOTA • REVENUE

Department Policy Bill

April 8, 2011

	Yes	No
DOR Administrative Costs/Savings		X

Department of Revenue
Analysis of S.F. 870 (Ortman) / H.F. 1316 (Davids)

	<u>Fund Impact</u>			
	<u>F.Y. 2012</u>	<u>F.Y. 2013</u>	<u>F.Y. 2014</u>	<u>F.Y. 2015</u>
	(000's)			
General Fund	\$0	\$0	\$0	\$0

EXPLANATION OF THE BILL

A summary prepared by the Appeals and Legal Services Division of the Department of Revenue is attached.

REVENUE ANALYSIS DETAIL

The provisions of the bill are not expected to have an impact on state revenues.

Source: Minnesota Department of Revenue
Tax Research Division and
Property Tax Division, Research Unit
http://www.taxes.state.mn.us/taxes/legal_policy

sf0870(hf1316)_1 / cc

2011 DEPARTMENT OF REVENUE POLICY BILL SUMMARY

MINNESOTA • REVENUE

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

FINAL

Article 1. Individual Income and Withholding Taxes

Section 1. Additional tax charge abatement. Amends Minn. Stat. § 270C.34, subd. 1, 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.

Section 2. Filing requirements for active duty members of military. Amends Minn. Stat. § 289A.08, subd. 1, 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.

Section 3. Composite estimated tax. Amends Minn. Stat. § 289A.08, subd. 7, 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.

Section 4. Third party payers of sick pay. Amends Minn. Stat. § 289A.12 by adding a new subdivision to require certain third party payers of sick pay to file an annual report with the commissioner of revenue. The new reporting requirement will improve accuracy of payroll reporting as currently there is a disconnect between the tax listed on employee W-2 forms and the tax included on employer withholding returns. This change will lower administrative burden for the department and for employers as this will reduce department requests to employers in the reconciliation process. 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.

Section 5. Estimated tax pass-through entities. Amends Minn. Stat. § 289A.25, subd. 1, 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.

Section 6. Estimated tax first-year exception. Amends Minn. Stat. § 289A.25, subd. 6, 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.

Section 7. Estimated tax short taxable year. Amends Minn. Stat. § 289A.25, 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.

Section 8. Estimated tax S corporations. Amends Minn. Stat. § 289A.26, subd. 1, moves 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.

Section 9. Backup withholding for independent contractors. Amends Minn. Stat. § 290.92, subd. 26, to clarify that backup withholding applies to payments made to independent contractors who are subject to withholding under § 290.92, subd. 31. Effective the day following final enactment.

Article 2. Estate Tax

For the 16 years ending December 31, 2001, the Minnesota estate tax was directly linked to the federal estate tax as a “pickup” or “soak-up” tax equal to the credit allowed under federal estate tax for state estate and inheritance taxes. In 2001, Congress repealed this credit and the Minnesota legislature chose to continue imposing the Minnesota estate tax under the rules in effect prior to the federal repeal.

On December 17, 2010, Public Law 111-312 continued the repeal of the federal credit for state estate and inheritance taxes while amending the federal due date of returns and payments for estates of decedents dying after December 31, 2009 and before December 17, 2010. New federal law also imposes a federal estate tax on estates of 2010 decedents (with a step-up in basis) while allowing those estates to opt out of the federal estate tax (in return for a modified carry-over basis).

The amendments described below modify the Minnesota estate tax audit period to be more in line with other states and the federal estate tax and make changes in light of Public Law 111-312.

Section 1. Estate tax return due date. Amends Minn. Stat. § 289A.18, subd. 3, 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 not due before September 19, 2011. The current filing due date, including an automatic 6-month extension, is fifteen months after date of death. Effective for estates of decedents dying after December 31, 2009.

Sections 2 and 4. Estate tax audit period. Repeals Minn. Stat. § 289A.38, subd. 3 and amends Minn. Stat. § 289A.38, subd. 5, extending the general 3-1/2 year assessment period to estate tax returns. The current audit period is 180 days after a complete return is filed. This makes the audit period for estate tax more in line with other states and the federal estate tax. Effective for estates of decedents dying after the day of final enactment.

Section 3. Minnesota qualified terminable interest property (QTIP). In light of Public Law 111-312, amends Minn. Stat. § 291.03, subd. 1b, to maintain an irrevocable QTIP election on the Minnesota estate tax return for estates of 2010 decedents if no federal estate tax is imposed. Effective for estates of decedents dying after December 31, 2009.

Article 3. Property Tax

Current law does not provide a sufficient time period to make corrections regarding the property taxes and valuation of utility, railroad, and wind energy production facilities. The new time periods for adjustments would allow the revised values to be reflected on the Truth in Taxation notices and would be prior to the local jurisdictions setting their final budget and property tax levies.

Sections 1, 2, 5 – 8. Correction of railroad, utility, and wind energy production values. Amends Minn. Stat. §§ 270.87 and 274.175 to allow the commissioner to issue corrected certifications of railroad valuations to the county assessor until August 31 of the assessment year if the amounts certified on or before June 30 are in error. Under current law the valuations cannot be corrected after June 30. Effective for taxes payable in 2012 and thereafter.

Amends Minn. Stat. § 272.029 by adding a new subdivision 4a, to allow the commissioner to correct errors in the amount of tax certified to the counties and the taxpayer. Corrections would have to be made by April 1 of the taxes payable year. Effective beginning with certifications due February 28, 2012.

Amends Minn. Stat. §§ 273.33, 273.37, 273.3711 and 274.175 to allow the commissioner to correct electric utility values until October 1 of the assessment year if the amounts certified on or before August 1 are in error. Under current law the valuations cannot be corrected after August 1. Also clarifies that when the commissioner provides recommended values, those values must be certified at the same time that ordered values are certified. Effective for taxes payable in 2012 and thereafter.

Section 3. Homestead first-tier class rate for entity-owned lands. Amends Minn. Stat. § 273.124, subd. 8(d), to clarify the provision enacted in 2010 that allows the remainder of an individual’s first-tier agricultural homestead class-rate benefit to extend to land that is not already a homestead, but which is owned by an entity of which the person is a member, shareholder or partner. The following clarifications are made: (1) the provision grants a class-rate benefit; (2) as in the case of a homestead, the provision covers both class 2a land and contiguous 2b land of the claimant; (3) the claimant’s homestead parcel must be owner-occupied; and (4) the benefit only applies to nonhomestead property. Effective retroactively for taxes payable in 2011 and thereafter.

Section 4. Agricultural homesteads. Amends Minn. Stat. § 273.13, subd. 23, paragraph (e), to treat intensive livestock confinement operations (such as a poultry farm) as an agricultural use, regardless of their size. Other language changes in this section are for clarification only. Effective the day following final enactment.

Article 4. Sales and Use Tax

Section 1. Accelerated monthly payment. Amends Minn. Stat. § 289A.60, subd. 31, paragraph (b), to provide an additional safe harbor for those vendors that, on or before the 20th day of the month in which the taxable event occurs, must remit a prepayment of sales tax liabilities for the month in which the taxable event occurs equal to 67 percent of the liabilities for the previous month, including any other tax or fee paid on the same return. The penalty for underpayment will not be imposed if the amount remitted is equal to the liabilities for the month in which the taxable event occurred. Effective for sales and purchases after June 30, 2011.

Sections 2 and 3. Rate change transitional language. Amends Minn. Stat. §§ 297A.62 and 297A.63 to provide transitional language for services when there is a rate change and the service covers a period beginning before and ending after the effective date. This change is done for purposes of Streamlined Sales Tax conformity and is similar to previous administrative and legislative practice. This does not have any impact unless there is a future rate change. Effective the day following final enactment.

Sections 4 and 5. Direct mail sourcing. Amends Minn. Stat. § 297A.668, subd. 7, and adds a subdivision 7a, to distinguish between “advertising and promotional” direct mail and “other direct

mail,” for purposes of determining the location of the sale, and therefore to what state or local jurisdiction any applicable tax is owed. The statutory term for this determination is “sourcing.” Under the proposed amendment, if the purchaser of “other direct mail” does not provide either a direct pay permit or an exemption certificate claiming direct mail, the seller shall source to the address of the purchaser, rather than under the current law which would either source to the delivery destination or to the address from which the mail is shipped. This has no revenue impact, because what is included in “other direct mail” is either not taxable in Minnesota or if taxable it is not sourced here under the current direct mail sourcing provisions. That is, Minnesota does not impose sales or use tax on bills, bank statements, privacy notices, or other items that fall into the definition of “other direct mail” based on where they are mailed. Rather, Minnesota has always considered this type of printed material to be administrative in nature and has always sourced it to the purchaser’s address if it was taxable. These changes are done for purposes of Streamlined Sales Tax conformity. Effective for sales and purchases made after June 30, 2011.

Section 6. St. Paul lodging related services. Amends Laws 1986, chapter 462, section 31, as amended by Laws 1991, chapter 291, article 8, section 24, to clarify that a St. Paul local sales tax on lodging at establishments having 50 or more lodging rooms is supposed to be based on the consideration furnished for both lodging and related services. St. Paul currently imposes two different taxes on lodging, and the tax base for each is slightly different. The first 3% applies to charges for lodging and related services. The additional 3% applies to lodging at establishments with 50 or more rooms available, but the current session law only uses the term “lodging,” without the words “related services.” Effective for sales and purchases made after June 30, 2011.

Article 5. Miscellaneous

Section 1. Police and fire aids. Amends Minn. Stat. § 69.031, subd. 1, to modify the interest that must be included with late payments of fire or police state aids. Currently, interest from the prior July 1 must be included if the payments are not made by October 1. The new language provides that interest will not accrue until after October 1. This eliminates an excessive interest calculation if a payment is only a few days late. Effective the day following final enactment.

Section 2. Application for business registration. Creates a new section, Minn. Stat. § 270C.101, waiving the requirement for an entity applying for a Minnesota business tax account number to list the names, home addresses, and social security numbers of its officers or directors, when the applicant is an instrumentality of state, local, federal, or tribal government. Effective the day following final enactment.

Section 3. Rounding on tax forms. Creates a new section, Minn. Stat. § 270C.301, that authorizes the Department to require rounding of line item amounts less than a dollar to the nearest dollar on any form filed with the Department of Revenue, for those tax types which do not already have rounding authority. Currently, income tax, sales tax, and property tax refunds each have a statutory provision for rounding. Effective the day following final enactment.

Section 4. Notice of subpoena. Amends Minn. Stat. § 270C.32, subd. 3, to provide that notice of a third party record keeper subpoena does not have to be given to the taxpayer when there is a criminal investigation, and prohibits the party served with the subpoena from notifying the taxpayer. Effective for subpoenas served after the day following final enactment.

Section 5. Service of subpoenas. Creates a new subdivision 11 in Minn. Stat. § 270C.32, providing that subpoenas may be served personally or by mail. This provision is parallel to the service of levy provision in Minn. Stat. § 270C.67, subd. 14. Effective the day following final enactment.

Section 6. Credit of payments against delinquent tax liabilities. Amends Minn. Stat. § 270C.64 to allow the commissioner to credit payments due any person against a delinquent uncontested liability. Current law only allows overpayments of tax to be credited. The amendment would allow the commissioner to also credit payments that are not overpayments of tax against liabilities. For example, sustainable forest incentive payments. Effective for liabilities becoming delinquent after the day of final enactment.

Section 7. Notice of sale of seized property. Amends Minn. Stat. § 270C.7101, subd. 2, to eliminate an administratively burdensome requirement to physically post the notice in the county courthouse where the seizure was made. Effective for seizures begun on or after the day following final enactment.

Section 8. Levied and redeemed property refund account. Amends Minn. Stat. § 270C.711 to change the commissioner's report on the status of the seizure program from a quarterly to an annual report. The committees reported to are amended to change obsolete references to conform with current standards. Effective the day following final enactment.

Section. 9. Mortgage registry tax, mortgage supplements. Amends Minn. Stat. § 287.05, subd. 2, to clarify that an existing mortgage is taxable to the extent that it is modified to secure new funds advanced to the debtor, on which the tax has not been paid; even though the new outstanding amount of debt does not exceed the amount previously secured by the mortgage. Occasionally, taxpayers have argued this new debt is not subject to tax even though it is taxable debt on which the tax has not been paid. This does not apply to line-of-credit mortgages for which there is an existing allowance in statute. Effective the day following final enactment.

Section 10. Repealer. Repeals the rounding authority for income tax in Minn. Stat. § 290.06, subd. 10 and repeals the rounding authority for the property tax refund in Minn. Stat. § 290A.27. The rounding authority for these tax types will remain the same and is now set forth in section 3. Effective the day following final enactment.