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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1958

03/08/2021 Authored by Davids
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; allowing pass-through entities to file as C-option
1.3 corporations; amending Minnesota Statutes 2020, sections 289A.08, by adding a
1.4 subdivision; 289A.38, by adding a subdivision; 290.01, by adding a subdivision;
1.5 290.0132, by adding a subdivision; 290.06, subdivisions 2c, 22; 290.091,
1.6 subdivision 2; 290.0921, subdivision 2; 290.92, subdivisions 4b, 4c; proposing
1.7 coding for new law in Minnesota Statutes, chapter 290.

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

1.9 Section 1. Minnesota Statutes 2020, section 289A.08, is amended by adding a subdivision
1.10 to read:

1.11 Subd. 7a. Election to file as C-option corporation. (a) A qualifying entity may elect
1.12 to file a return as a C-option corporation. Except as provided in this subdivision, a C-option
1.13 corporation must calculate its tax liability as a corporation subject to the franchise tax on
1.14 corporations imposed in section 290.02 and must allocate its income as a corporation as
1.15 required under sections 290.17, 290.191, and 290.20.

1.16 (b) The election under paragraph (a):

1.17 (1) must be made on or before the due date or extended due date of the qualifying entity's
1.18 return as a C-option corporation;

1.19 (2) may only be made by persons who hold more than 50 percent ownership interest in
1.20 the qualifying entity; and

1.21 (3) is binding on all persons who have an ownership interest in the qualifying entity.

1.22 (c) The election is binding for a period of four taxable years following the taxable year
1.23 of the election. The election may be revoked before the expiration of the period if:

2.1 (1) the revocation is requested by persons who hold more than 50 percent ownership
2.2 interest in the qualifying entity; and

2.3 (2) the revocation is made on or before the due date or the extended due date of the
2.4 qualifying entity's return for that year.

2.5 (d) If an election is revoked before the expiration of the period, a new election to file as
2.6 a C-option corporation may not be made by the qualifying entity for the following four
2.7 taxable years.

2.8 (e) The expiration or revocation of an election is effective at the close of a taxable year
2.9 and nothing in this section releases a C-option corporation from complying with the
2.10 requirements of this chapter for that taxable year.

2.11 (f) For purposes of this subdivision:

2.12 (1) "qualifying entity" means a:

2.13 (i) partnership;

2.14 (ii) limited liability company; or

2.15 (iii) corporation organized under subchapter S of the Internal Revenue Code for federal
2.16 income tax purposes, including a qualified subsidiary also organized under subchapter S of
2.17 the Internal Revenue Code; and

2.18 (2) "C-option corporation" means a qualifying entity that has made the election under
2.19 paragraph (a).

2.20 (g) Tax liability must be calculated by multiplying the Minnesota taxable income of the
2.21 qualifying entity by a tax rate of 9.85 percent.

2.22 (h) A member's, partner's, or shareholder's adjusted basis in the member's, partner's, or
2.23 shareholder's interest in the limited liability company, partnership, or S corporation, and
2.24 the treatment of distributions, is determined as if the election under this subdivision is not
2.25 made.

2.26 (i) A qualifying entity must not have a partnership, limited liability company, or
2.27 corporation as a member or partner.

2.28 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
2.29 31, 2020.

3.1 Sec. 2. Minnesota Statutes 2020, section 289A.38, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 17. **C-option corporations.** For purposes of this section, "taxpayer" includes a
3.4 C-option corporation, and all applicable reports, amendments, adjustments, assessments,
3.5 changes in tax, refunds, and statements under this section apply to a C-option corporation
3.6 for those taxable years in which the C-option election under section 289A.08, subdivision
3.7 7a, is effective. For purposes of this subdivision, "C-option corporation" means a qualifying
3.8 entity under section 289A.08, subdivision 7a, paragraph (f), that made the election in section
3.9 289A.08, subdivision 7a, paragraph (a), for the applicable tax year.

3.10 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
3.11 31, 2020.

3.12 Sec. 3. Minnesota Statutes 2020, section 290.01, is amended by adding a subdivision to
3.13 read:

3.14 Subd. 4d. **C-option corporation.** "C-option corporation" means a qualifying entity
3.15 under section 289A.08, subdivision 7a, paragraph (f), that made the election in section
3.16 289A.08, subdivision 7a, paragraph (a), for the applicable tax year.

3.17 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
3.18 31, 2020.

3.19 Sec. 4. Minnesota Statutes 2020, section 290.0132, is amended by adding a subdivision
3.20 to read:

3.21 Subd. 30. **Income of partners, members, or shareholders.** The amount of income
3.22 determined after allowable deductions and the additions and subtractions required under
3.23 this chapter that is received from a qualifying entity, as defined under section 289A.08,
3.24 subdivision 7a, for purposes of calculating adjusted gross income by a partner, member, or
3.25 shareholder of a qualifying entity that has elected to file as a C-option corporation under
3.26 section 289A.08, subdivision 7a, is a subtraction. The amount of net income as adjusted
3.27 under this subdivision must not be less than zero. The amount of the subtraction allowed
3.28 under this subdivision may not exceed the partner's, member's, or shareholder's portions of
3.29 the qualifying entity's net income after assignment under section 290.17, or apportionment
3.30 under section 290.191 or 290.20, as may be required.

3.31 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
3.32 31, 2020.

4.1 Sec. 5. Minnesota Statutes 2020, section 290.06, subdivision 2c, is amended to read:

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

4.6 (1) On the first \$38,770, 5.35 percent;

4.7 (2) On all over \$38,770, but not over \$154,020, 6.8 percent;

4.8 (3) On all over \$154,020, but not over \$269,010, 7.85 percent;

4.9 (4) On all over \$269,010, 9.85 percent.

4.10 Married individuals filing separate returns, estates, and trusts must compute their income
4.11 tax by applying the above rates to their taxable income, except that the income brackets
4.12 will be one-half of the above amounts after the adjustment required in subdivision 2d.

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

4.15 (1) On the first \$26,520, 5.35 percent;

4.16 (2) On all over \$26,520, but not over \$87,110, 6.8 percent;

4.17 (3) On all over \$87,110, but not over \$161,720, 7.85 percent;

4.18 (4) On all over \$161,720, 9.85 percent.

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

4.22 (1) On the first \$32,650, 5.35 percent;

4.23 (2) On all over \$32,650, but not over \$131,190, 6.8 percent;

4.24 (3) On all over \$131,190, but not over \$214,980, 7.85 percent;

4.25 (4) On all over \$214,980, 9.85 percent.

4.26 (d) In lieu of a tax computed according to the rates set forth in this subdivision, the tax
4.27 of any individual taxpayer whose taxable net income for the taxable year is less than an
4.28 amount determined by the commissioner must be computed in accordance with tables
4.29 prepared and issued by the commissioner of revenue based on income brackets of not more
4.30 than \$100. The amount of tax for each bracket shall be computed at the rates set forth in

5.1 this subdivision, provided that the commissioner may disregard a fractional part of a dollar
5.2 unless it amounts to 50 cents or more, in which case it may be increased to \$1.

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

5.7 (1) the numerator is the individual's Minnesota source federal adjusted gross income as
5.8 defined in section 62 of the Internal Revenue Code and increased by:

5.9 (i) the additions required under sections 290.0131, subdivisions 2, 6, 8 to 10, 16, and
5.10 17, and 290.0137, paragraph (a); and reduced by

5.11 (ii) the Minnesota assignable portion of the subtraction for United States government
5.12 interest under section 290.0132, subdivision 2, the subtractions under sections 290.0132,
5.13 subdivisions 9, 10, 14, 15, 17, 18, ~~and 27,~~ and 30, and 290.0137, paragraph (c), after applying
5.14 the allocation and assignability provisions of section 290.081, clause (a), or 290.17; and

5.15 (2) the denominator is the individual's federal adjusted gross income as defined in section
5.16 62 of the Internal Revenue Code, increased by:

5.17 (i) the additions required under sections 290.0131, subdivisions 2, 6, 8 to 10, 16, and
5.18 17, and 290.0137, paragraph (a); and reduced by

5.19 (ii) the subtractions under sections 290.0132, subdivisions 2, 9, 10, 14, 15, 17, 18, ~~and~~
5.20 27, and 30, and 290.0137, paragraph (c).

5.21 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
5.22 31, 2020.

5.23 Sec. 6. Minnesota Statutes 2020, section 290.06, subdivision 22, is amended to read:

5.24 Subd. 22. **Credit for taxes paid to another state.** (a) A taxpayer who is liable for taxes
5.25 based on net income to another state, as provided in paragraphs (b) through (f), upon income
5.26 allocated or apportioned to Minnesota, is entitled to a credit for the tax paid to another state
5.27 if the tax is actually paid in the taxable year or a subsequent taxable year. A taxpayer who
5.28 is a resident of this state pursuant to section 290.01, subdivision 7, paragraph (b), and who
5.29 is subject to income tax as a resident in the state of the individual's domicile is not allowed
5.30 this credit unless the state of domicile does not allow a similar credit.

5.31 (b) For an individual, estate, or trust, the credit is determined by multiplying the tax
5.32 payable under this chapter by the ratio derived by dividing the income subject to tax in the

6.1 other state that is also subject to tax in Minnesota while a resident of Minnesota by the
6.2 taxpayer's federal adjusted gross income, as defined in section 62 of the Internal Revenue
6.3 Code, modified by the addition required by section 290.0131, subdivision 2, and the
6.4 subtraction allowed by section 290.0132, subdivision 2, to the extent the income is allocated
6.5 or assigned to Minnesota under sections 290.081 and 290.17.

6.6 (c) If the taxpayer is an athletic team that apportions all of its income under section
6.7 290.17, subdivision 5, the credit is determined by multiplying the tax payable under this
6.8 chapter by the ratio derived from dividing the total net income subject to tax in the other
6.9 state by the taxpayer's Minnesota taxable income.

6.10 (d)(1) The credit determined under paragraph (b) or (c) shall not exceed the amount of
6.11 tax so paid to the other state on the gross income earned within the other state subject to
6.12 tax under this chapter; and

6.13 (2) the allowance of the credit does not reduce the taxes paid under this chapter to an
6.14 amount less than what would be assessed if the gross income earned within the other state
6.15 were excluded from taxable net income.

6.16 (e) In the case of the tax assessed on a lump-sum distribution under section 290.032, the
6.17 credit allowed under paragraph (a) is the tax assessed by the other state on the lump-sum
6.18 distribution that is also subject to tax under section 290.032, and shall not exceed the tax
6.19 assessed under section 290.032. To the extent the total lump-sum distribution defined in
6.20 section 290.032, subdivision 1, includes lump-sum distributions received in prior years or
6.21 is all or in part an annuity contract, the reduction to the tax on the lump-sum distribution
6.22 allowed under section 290.032, subdivision 2, includes tax paid to another state that is
6.23 properly apportioned to that distribution.

6.24 (f) If a Minnesota resident reported an item of income to Minnesota and is assessed tax
6.25 in such other state on that same income after the Minnesota statute of limitations has expired,
6.26 the taxpayer shall receive a credit for that year under paragraph (a), notwithstanding any
6.27 statute of limitations to the contrary. The claim for the credit must be submitted within one
6.28 year from the date the taxes were paid to the other state. The taxpayer must submit sufficient
6.29 proof to show entitlement to a credit.

6.30 (g) For the purposes of this subdivision, a resident shareholder of a corporation treated
6.31 as an "S" corporation under section 290.9725, must be considered to have paid a tax imposed
6.32 on the shareholder in an amount equal to the shareholder's pro rata share of any net income
6.33 tax paid by the S corporation to another state. For the purposes of the preceding sentence,

7.1 the term "net income tax" means any tax imposed on or measured by a corporation's net
7.2 income.

7.3 (h) For the purposes of this subdivision, a resident partner of an entity taxed as a
7.4 partnership under the Internal Revenue Code must be considered to have paid a tax imposed
7.5 on the partner in an amount equal to the partner's pro rata share of any net income tax paid
7.6 by the partnership to another state. For purposes of the preceding sentence, the term "net
7.7 income" tax means any tax imposed on or measured by a partnership's net income.

7.8 (i) For the purposes of this subdivision, "another state":

7.9 (1) includes:

7.10 (i) the District of Columbia; and

7.11 (ii) a province or territory of Canada; but

7.12 (2) excludes Puerto Rico and the several territories organized by Congress.

7.13 (j) The limitations on the credit in paragraphs (b), (c), and (d), are imposed on a state
7.14 by state basis.

7.15 (k) For a tax imposed by a province or territory of Canada, the tax for purposes of this
7.16 subdivision is the excess of the tax over the amount of the foreign tax credit allowed under
7.17 section 27 of the Internal Revenue Code. In determining the amount of the foreign tax credit
7.18 allowed, the net income taxes imposed by Canada on the income are deducted first. Any
7.19 remaining amount of the allowable foreign tax credit reduces the provincial or territorial
7.20 tax that qualifies for the credit under this subdivision.

7.21 (l)(1) The credit allowed to a qualifying individual under this section for tax paid to a
7.22 qualifying state equals the credit calculated under paragraphs (b) and (d), plus the amount
7.23 calculated by multiplying:

7.24 (i) the difference between the preliminary credit and the credit calculated under paragraphs
7.25 (b) and (d), by

7.26 (ii) the ratio derived by dividing the income subject to tax in the qualifying state that
7.27 consists of compensation for performance of personal or professional services by the total
7.28 amount of income subject to tax in the qualifying state.

7.29 (2) If the amount of the credit that a qualifying individual is eligible to receive under
7.30 clause (1) for tax paid to a qualifying state exceeds the tax due under this chapter before
7.31 the application of the credit calculated under clause (1), the commissioner shall refund the

8.1 excess to the qualifying individual. An amount sufficient to pay the refunds required by this
8.2 subdivision is appropriated to the commissioner from the general fund.

8.3 (3) For purposes of this paragraph, "preliminary credit" means the credit that a qualifying
8.4 individual is eligible to receive under paragraphs (b) and (d) for tax paid to a qualifying
8.5 state without regard to the limitation in paragraph (d), clause (2); "qualifying individual"
8.6 means a Minnesota resident under section 290.01, subdivision 7, paragraph (a), who received
8.7 compensation during the taxable year for the performance of personal or professional services
8.8 within a qualifying state; and "qualifying state" means a state with which an agreement
8.9 under section 290.081 is not in effect for the taxable year but was in effect for a taxable
8.10 year beginning before January 1, 2010.

8.11 (m) A resident partner, member, or shareholder of a qualifying entity making an election
8.12 to be taxed as a C-option corporation under section 289A.08, subdivision 7a, may claim a
8.13 credit for the amount of their pro rata share of any net income tax paid to another state by
8.14 the entity or on a composite return filed with that state on behalf of its Minnesota resident
8.15 partners, members, or shareholders. For purposes of this paragraph, "net income tax" means
8.16 any tax imposed on or measured by net income, but "net income" does not include any
8.17 income that is apportioned to this state under section 290.191 or 290.20.

8.18 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
8.19 31, 2020.

8.20 Sec. 7. Minnesota Statutes 2020, section 290.091, subdivision 2, is amended to read:

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

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

8.25 (1) the taxpayer's federal alternative minimum taxable income as defined in section
8.26 55(b)(2) of the Internal Revenue Code;

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

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

8.30 (ii) the medical expense deduction;

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

8.32 (iv) the impairment-related work expenses of a person with a disability;

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

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

9.10 (5) to the extent not included in federal alternative minimum taxable income, the amount
9.11 of interest income as provided by section 290.0131, subdivision 2;

9.12 (6) the amount of addition required by section 290.0131, subdivisions 9, 10, and 16;

9.13 (7) the deduction allowed under section 199A of the Internal Revenue Code, to the extent
9.14 not included in the addition required under clause (6); and

9.15 (8) to the extent not included in federal alternative minimum taxable income, the amount
9.16 of foreign-derived intangible income deducted under section 250 of the Internal Revenue
9.17 Code;

9.18 less the sum of the amounts determined under the following:

9.19 (i) interest income as defined in section 290.0132, subdivision 2;

9.20 (ii) an overpayment of state income tax as provided by section 290.0132, subdivision
9.21 3, to the extent included in federal alternative minimum taxable income;

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

9.26 (iv) amounts subtracted from federal taxable or adjusted gross income as provided by
9.27 section 290.0132, subdivisions 7, 9 to 15, 17, 21, 24, and 26 to ~~29~~ 30;

9.28 (v) the amount of the net operating loss allowed under section 290.095, subdivision 11,
9.29 paragraph (c); and

9.30 (vi) the amount allowable as a Minnesota itemized deduction under section 290.0122,
9.31 subdivision 7.

10.1 In the case of an estate or trust, alternative minimum taxable income must be computed
10.2 as provided in section 59(c) of the Internal Revenue Code, except alternative minimum
10.3 taxable income must be increased by the addition in section 290.0131, subdivision 16.

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

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

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

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

10.12 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
10.13 31, 2020.

10.14 Sec. 8. Minnesota Statutes 2020, section 290.0921, subdivision 2, is amended to read:

10.15 Subd. 2. **Definitions.** (a) For purposes of this section, the following terms have the
10.16 meanings given them.

10.17 (b) "Alternative minimum taxable net income" is alternative minimum taxable income,

10.18 (1) less the exemption amount, and

10.19 (2) apportioned or allocated to Minnesota under section 290.17, 290.191, or 290.20.

10.20 (c) The "exemption amount" is \$40,000, reduced, but not below zero, by 25 percent of
10.21 the excess of alternative minimum taxable income over \$150,000.

10.22 (d) "Minnesota alternative minimum taxable income" is alternative minimum taxable
10.23 net income, less the deductions for alternative tax net operating loss under subdivision 4;
10.24 and dividends received under subdivision 6. The sum of the deductions under this paragraph
10.25 may not exceed 90 percent of alternative minimum taxable net income. This limitation does
10.26 not apply to:

10.27 (1) a deduction for dividends paid to or received from a corporation which is subject to
10.28 tax under section 290.36 and which is a member of an affiliated group of corporations as
10.29 defined by the Internal Revenue Code; or

10.30 (2) a deduction for dividends received from a property and casualty insurer as defined
10.31 under section 60A.60, subdivision 8, which is a member of an affiliated group of corporations

11.1 as defined by the Internal Revenue Code and either: (i) the dividend is eliminated in
11.2 consolidation under Treasury Regulation 1.1502-14(a), as amended through December 31,
11.3 1989; or (ii) the dividend is deducted under an election under section 243(b) of the Internal
11.4 Revenue Code.

11.5 (e) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended
11.6 through December 16, 2016, except that for the purposes of exclusion from gross income
11.7 of paycheck protection loan forgiveness and allowable deductions of covered expenses paid
11.8 for with covered loans under section 1106 of Public Law 116-136, as clarified by Title II,
11.9 subtitle B, section 276(a)(i) of Public Law 116-260, "Internal Revenue Code" means the
11.10 Internal Revenue Code as amended through December 27, 2020.

11.11 **EFFECTIVE DATE.** This section is effective the day following final enactment, except
11.12 that changes incorporated by federal changes are effective retroactively at the same time
11.13 the changes were effective for federal purposes.

11.14 **Sec. 9. [290.096] SPECIAL RULES FOR C-OPTION CORPORATIONS.**

11.15 **Subdivision 1. Allocation of subtractions and credits.** No carryover generated by a
11.16 C-option corporation for a subtraction allowed under this chapter that remains after the
11.17 revocation or expiration of the election in section 289A.08, subdivision 7a, paragraph (a),
11.18 may be claimed by a partner, member, or shareholder of that C-option corporation.

11.19 **Subd. 2. Credits.** (a) Credits and credit carryovers against the tax due under this chapter
11.20 that are claimed by a C-option corporation must be distributed as follows:

11.21 (1) for a nonrefundable credit, the credit is distributed to the C-option corporation; and

11.22 (2) for a refundable credit, the amount of the credit that does not exceed the C-option
11.23 corporation's taxable income is distributed to the C-option corporation and the amount of
11.24 the credit that exceeds the amount of the C-option corporation's taxable income is distributed
11.25 in the same manner as the subtraction in section 290.0132, subdivision 30.

11.26 (b) A credit carryover generated by an individual taxpayer may be claimed by a C-option
11.27 corporation of which the individual is a partner, member, or shareholder.

11.28 **Subd. 3. Refunds.** (a) A C-option corporation may make a claim for a refund under
11.29 section 289A.50. Refunds must be paid to each partner, member, or shareholder in the same
11.30 manner as the distribution of the subtraction in section 290.0132, subdivision 30.

11.31 (b) For purposes of applying interest to refunds under paragraph (a), the amount refunded
11.32 bears interest under section 289A.56, subdivision 2, from the later of when the partner's,

12.1 member's, or shareholder's individual return is filed or when the C-option corporation's
 12.2 return is filed.

12.3 Subd. 4. **Estimated tax.** (a) A C-option corporation must make payments of estimated
 12.4 tax as required under section 289A.26.

12.5 (b) Payments of estimated tax under paragraph (a) made by a C-option corporation for
 12.6 a taxable year for which the taxpayer is not a C-option corporation must be distributed to
 12.7 each partner, member, or shareholder in the same manner as the distribution of the subtraction
 12.8 in section 290.0132, subdivision 30.

12.9 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
 12.10 31, 2020.

12.11 Sec. 10. Minnesota Statutes 2020, section 290.92, subdivision 4b, is amended to read:

12.12 Subd. 4b. **Withholding by partnerships.** (a) A partnership shall deduct and withhold
 12.13 a tax as provided in paragraph (b) for nonresident individual partners based on their
 12.14 distributive shares of partnership income for a taxable year of the partnership.

12.15 (b) The amount of tax withheld is determined by multiplying the partner's distributive
 12.16 share allocable to Minnesota under section 290.17, paid or credited during the taxable year
 12.17 by the highest rate used to determine the income tax liability for an individual under section
 12.18 290.06, subdivision 2c, except that the amount of tax withheld may be determined by the
 12.19 commissioner if the partner submits a withholding exemption certificate under subdivision
 12.20 5.

12.21 (c) The commissioner may reduce or abate the tax withheld under this subdivision if the
 12.22 partnership had reasonable cause to believe that no tax was due under this section.

12.23 (d) Notwithstanding paragraph (a), a partnership is not required to deduct and withhold
 12.24 tax for a nonresident partner if:

12.25 (1) the partner elects to have the tax due paid as part of the partnership's composite return
 12.26 under section 289A.08, subdivision 7;

12.27 (2) the partner has Minnesota assignable federal adjusted gross income from the
 12.28 partnership of less than \$1,000; or

12.29 (3) the partnership is liquidated or terminated, the income was generated by a transaction
 12.30 related to the termination or liquidation, and no cash or other property was distributed in
 12.31 the current or prior taxable year;

12.32 (4) the distributive shares of partnership income are attributable to:

- 13.1 (i) income required to be recognized because of discharge of indebtedness;
- 13.2 (ii) income recognized because of a sale, exchange, or other disposition of real estate,
- 13.3 depreciable property, or property described in section 179 of the Internal Revenue Code;
- 13.4 or
- 13.5 (iii) income recognized on the sale, exchange, or other disposition of any property that
- 13.6 has been the subject of a basis reduction pursuant to section 108, 734, 743, 754, or 1017 of
- 13.7 the Internal Revenue Code
- 13.8 to the extent that the income does not include cash received or receivable or, if there is cash
- 13.9 received or receivable, to the extent that the cash is required to be used to pay indebtedness
- 13.10 by the partnership or a secured debt on partnership property; ~~or~~
- 13.11 (5) the partnership is a publicly traded partnership, as defined in section 7704(b) of the
- 13.12 Internal Revenue Code; or
- 13.13 (6) the partnership has elected to be taxed as a C-option corporation under section
- 13.14 289A.08, subdivision 7a.
- 13.15 (e) For purposes of sections 270C.60, 289A.09, subdivision 2, 289A.20, subdivision 2,
- 13.16 paragraph (c), 289A.50, 289A.56, 289A.60, and 289A.63, a partnership is considered an
- 13.17 employer.
- 13.18 (f) To the extent that income is exempt from withholding under paragraph (d), clause
- 13.19 (4), the commissioner has a lien in an amount up to the amount that would be required to
- 13.20 be withheld with respect to the income of the partner attributable to the partnership interest,
- 13.21 but for the application of paragraph (d), clause (4). The lien arises under section 270C.63
- 13.22 from the date of assessment of the tax against the partner, and attaches to that partner's share
- 13.23 of the profits and any other money due or to become due to that partner in respect of the
- 13.24 partnership. Notice of the lien may be sent by mail to the partnership, without the necessity
- 13.25 for recording the lien. The notice has the force and effect of a levy under section 270C.67,
- 13.26 and is enforceable against the partnership in the manner provided by that section. Upon
- 13.27 payment in full of the liability subsequent to the notice of lien, the partnership must be
- 13.28 notified that the lien has been satisfied.
- 13.29 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
- 13.30 31, 2020.

14.1 Sec. 11. Minnesota Statutes 2020, section 290.92, subdivision 4c, is amended to read:

14.2 Subd. 4c. **Withholding by S corporations.** (a) A corporation having a valid election in
14.3 effect under section 290.9725 shall deduct and withhold a tax as provided in paragraph (b)
14.4 for nonresident individual shareholders their share of the corporation's income for the taxable
14.5 year.

14.6 (b) The amount of tax withheld is determined by multiplying the amount of income
14.7 allocable to Minnesota under section 290.17 by the highest rate used to determine the income
14.8 tax liability of an individual under section 290.06, subdivision 2c, except that the amount
14.9 of tax withheld may be determined by the commissioner if the shareholder submits a
14.10 withholding exemption certificate under subdivision 5.

14.11 (c) Notwithstanding paragraph (a), a corporation is not required to deduct and withhold
14.12 tax for a nonresident shareholder, if:

14.13 (1) the shareholder elects to have the tax due paid as part of the corporation's composite
14.14 return under section 289A.08, subdivision 7;

14.15 (2) the shareholder has Minnesota assignable federal adjusted gross income from the
14.16 corporation of less than \$1,000; ~~or~~

14.17 (3) the corporation is liquidated or terminated, the income was generated by a transaction
14.18 related to the termination or liquidation, and no cash or other property was distributed in
14.19 the current or prior taxable year; or

14.20 (4) the S corporation has elected to be taxed as a C-option corporation under section
14.21 289A.08, subdivision 7a.

14.22 (d) For purposes of sections 270C.60, 289A.09, subdivision 2, 289A.20, subdivision 2,
14.23 paragraph (c), 289A.50, 289A.56, 289A.60, and 289A.63, a corporation is considered an
14.24 employer.

14.25 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
14.26 31, 2020.