

HOUSE RESEARCH

Bill Summary

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Overview

This bill eliminates a number of business tax preferences and reduces the corporate franchise tax rate by one percentage point and repeals the corporate alternative minimum tax.

The tax preferences, credits, and exemptions repealed include:

- Foreign operating corporations (FOCs), effective tax year 2008
- Foreign royalties, effective tax year 2009
- Research and development credit, effective tax year 2009
- JOBZ tax incentives – income and corporate tax provisions, effective for tax year 2009; sales tax exemption, effective 9/30/2008; property tax exemptions, effective for taxes payable in 2010
- International Economic Development Zone (IEDZ) incentives
- Biotechnology and health science industry zone incentives
- Bovine testing credit, effective for tax year 2009

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- Metropolitan airports exemption from the state general tax, effective for taxes payable in 2009

In addition, the bill subjects to corporate taxation development subsidies received under the Minnesota tax increment financing (TIF) and abatement programs, effective for tax year 2009. Foreign corporations incorporated in tax havens or doing business in tax havens must be included on the combined report of a unitary business, as well as foreign corporations with an average of 20 percent or more of their property, payroll, and sales in the United States.

- 1** **JOBZ replacement grant program.** Establishes a grant program in the Department of Employment and Economic Development (DEED) for qualified businesses to partially compensate for or mitigate the effects of the repeal of JOBZ tax exemptions under section 0 and other provisions of the bill.

Voiding of business subsidy agreements. Qualified businesses are given a choice of opting out of their business subsidy agreements (which they entered as a condition for receiving the JOBZ tax exemptions) or receiving a grant. If the business elects to void its business subsidy agreement, it may do so effective July 1, 2008 (or later if it waits to see if it qualifies for a grant).

Grant authority. DEED may make grants to qualified businesses that apply. DEED is directed to set up the application forms, process, and time lines for the grants. It is not subject to the Administrative Procedures Act requirements in doing so. Grants will be made in two equal installments on July 1, 2009 and July 1, 2010. DEED decisions regarding the grants are not subject to review and are not a legal entitlement of the applicant business.

Businesses that don't qualify. DEED may not make grants to the following businesses:

- A business that has elected to void its business subsidy agreement.
- The business's JOBZ investment did not meet a but-for test (i.e., that it would have located in the zone or elsewhere in Greater Minnesota even without the JOBZ tax exemptions). This determination is based on DEED's opinion of the evidence.
- It is in violation of its business subsidy agreement.

Factors DEED may consider in making grants. In determining whether to make a grant and in setting the amount of the grant DEED can, but is not required to, consider the following:

- The present value of the JOBZ tax benefits of the business that were eliminated by the bill
- Evidence as to whether the business would have invested or located in Minnesota if the JOBZ tax benefits had not been provided

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- Any higher costs the business incurred as a result of locating in the JOBZ
- The performance of the business under its business subsidy agreement
- Whether the business is likely to cease operations in the zone if doesn't receive a grant
- The hardship on the business from repeal of the tax benefits
- Whether the area is suffering economic distress (unemployment, population loss, and so forth) that retention of the business would help to relieve

Maximum grant amount. DEED may not make a grant to a business that exceeds:

- The present value of the tax benefits for the business that are repealed by the bill
- The present value of 20 percent of the sum of the business's projected payroll in the zone for calendar years 2009 through 2010
- \$2 5,000 for each new job created by the business in the zone.

Appropriation. The section appropriates \$10 million to DEED from the general fund to make the grants in fiscal year 2010. This appropriation carries over and can be used in fiscal year 2011. If DEED determines that the appropriation is insufficient to fully fund needed grants, it can certify to the commissioner of revenue an additional amount to be added to the state general tax levy for taxes payable in 2010. This certification must be made by September 15, 2009 . The amount generated is appropriated to DEED to make grants.

- 2 State general tax rate.** Provides that in setting the rate of the state general tax on commercial/industrial property, the commissioner is to ignore the tax capacity of the airport property added by section 0.

Effective date : property taxes payable in 2009

- 3 State general tax; airport exemption.** Eliminates the exemption for metropolitan airport commission property from the state general tax. This will subject property at the Minneapolis St. Paul International Airport and the St. Paul Airport (Holman) to the state general tax. The area of these airports will remain "detached" and the property within their borders will not be subject to city or school district property taxes.

Effective date : property taxes payable in 2009

- 4 Domestic corporation definitions.** Expands the definition of domestic corporation for purposes of the corporate franchise tax to include the following foreign corporations (i.e., corporations or other entities organized under the laws of a foreign country):
- Incorporated in a tax haven (defined in section 0)
 - Doing sufficient business in a tax haven to be subject to tax by the tax haven
 - With 20 percent or more of the average of their property, payroll, and sales in

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the United States .

Domestic corporations that are part of a unitary business must be included on the combined report. As a result, this will require the income and apportionment factors of these foreign corporations to be reflected in the combined report and will subject them to Minnesota corporate franchise tax. Present Minnesota law excludes all foreign corporations from the combined report, except foreign sales corporations.

Effective date : tax year 2008

- 5 Tax haven.** Defines “tax haven” as a list of foreign countries that have been publicly identified by both the Organization of Economic Opportunity and Cooperation (OECD) and by the Internal Revenue Services (based on federal court documents). The commissioner of revenue may add to or delete from this list. Countries qualify as tax havens by having both (1) nominal tax rates or no tax and (2) secrecy policies that restrict the ability of U.S. tax administrators to obtain tax information. The commissioner must remove countries from the list, if the United States enters into a tax treaty or similar agreement with the country that provides for sharing tax information with the Internal Revenue Service.

Effective date : tax year 2008

- 6 Individual income tax subtraction; JOBZ and IEDZ.** Repeals the individual income tax exemption for the Job Opportunity Building Zone (JOBZ) program and the International Economic Development Zone (IEDZ) program.

Effective date : tax year 2009

- 7 Corporate franchise tax additions.** Repeals the corporate franchise tax additions to federal taxable income for foreign operating corporations’ (FOCs) deemed dividends and the subpart F income deferral for financial institutions. Section 0 repeals FOCs. This provision eliminates the corresponding addition to income for the deemed dividend. The subpart F income addition attempts to disallow a deferral of income under federal law, but has generally not been successful in raising additional state revenue (as was originally intended by not following the federal rules).

Effective date : tax year 2007

- 8 Foreign royalty exclusion.** Repeals the subtraction from federal taxable income for foreign royalties, effective for tax year 2009. During tax year 2008, the subtraction is allow only to the extent that the payments are made for the use of intangible property in a foreign country. This section also repeals the subtraction for subpart F income that did not qualify for deferral. (Section 0 repealed the addition for this income.) Obsolete language related to the small ethanol producers is eliminated and a change to reflect the repeal of the research credit is made.

- 9 Corporate exemptions for JOBZ and IEDZ; Minnesota development subsidies.** Repeals the corporate franchise exemptions for the JOBZ and IEDZ programs. In addition, it imposes corporate franchise tax on Minnesota development subsidies (defined in section 0).

Effective date : tax year 2009

- 10 Minnesota development subsidies.** Defines “Minnesota development subsidies” (added

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to Minnesota taxable income for corporate franchise tax purposes under section 0). These amounts are defined as payments that the taxpayer deducted in computing federal taxable income as either property taxes or businesses expenses (e.g., under a triple net lease that requires the lessee to pay the property taxes) on property that is in a TIF district or abatement project. The property must be subject to a development agreement (for TIF) or derive a benefit from the abatement to be included. (Simply paying property taxes on property located in a TIF district would not qualify, if the property owner or developer did not enter a development agreement related to the TIF district.)

Effective date : tax year 2009

- 11 Corporate franchise tax rate.** Reduces the corporate tax rate from 9.8 percent to 8.8 percent.

Effective date : tax year 2009

- 12 Cross reference.** Makes conforming cross reference changes in the individual income tax rate statute as a result of repeal of the JOBZ and IEDZ programs.

Effective date : tax year 2009

- 13 Dependent care credit.** Eliminates references to the exemptions for JOBZ and IEDZ income in the dependent care credit statute.

Effective date : tax year 2009

- 14 Working family credit.** Eliminates references to the exemptions for JOBZ and IEDZ income in the working family credit statute.

Effective date : tax year 2009

- 15 Cross reference.** Makes conforming cross reference changes in the individual alternative minimum tax statute as a result of repeal of the JOBZ and IEDZ programs.

Effective date : tax year 2009

- 16 Minimum fee.** Eliminates the JOBZ and IEDZ program exemptions from the corporate minimum fee.

Effective date : tax year 2009

- 17 FOC deemed dividends.** Eliminates the authority to exclude the income and apportionment factors of FOCs from the combined report and eliminates the deemed dividend deduction for 80 percent of FOC income.

Effective date : tax year 2008

- 18 Motor vehicle sales tax exemption; JOBZ.** Repeals the JOBZ exemption from the motor vehicle sales tax. This exemption allows qualified businesses to purchase vehicles free from sales tax, if the vehicle is garaged in the zone and primarily used in direct support of the zone operations.

Effective date : Sales after September 30, 2008

- 19 Repealer.** Repeals the following provision of statutes and laws:

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Section of Statutes of Laws	Description
272.02, subd. 64	JOBZ property tax exemption
272.02, subd. 83	IEDZ property tax exemption
290.01 subd. 6b	Definition of FOC
290.06, subd. 24	Job credit for heavy maintenance base
290.06, subd. 29	JOBZ job credit
290.06, subd. 30	Biotechnology and health science industry zone job credit
290.06, subd. 31	Biotechnology and health science industry zone research credit
290.06, subd. 32	IEDZ job credit
290.06, subd. 33	Bovine testing credit
290.068	Research credit
290.0921	Corporate alternative minimum tax
290.191	Sales only apportionment for mail order businesses
297A.68, subd. 37	JOBZ sales tax exemption
297A.68, subd. 38	Biotechnology and health science industry zone sales tax exemption
297A.68, subd. 41	IEDZ sales tax exemption
469.311 – 469.3201	JOBZ program and tax provisions
469.321 – 469.329	IEDZ program and tax provision
469.330 – 469.339	Biotechnology and health science industry zone program and tax provisions
Laws 2005, 1 st Spec. Sess. ch. 3, art. 10 § 23, as amended	\$250,000 appropriation for the IEDZ grants
<p>Effective date : Income and corporate franchise tax provisions are effective for tax year 2009; sales tax provisions are effective for sales made after September 30, 2008 , but binding contracts are exempt if the purchases are made by March 31, 2009 ; and property tax provisions are effective for taxes payable in 2010.</p>	