HOUSE RESEARCH

Bill Summary

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Overview

This bill allows qualifying emerging technology and biotechnology corporations to transfer or sell Minnesota net operating loss (NOL) carryovers under the corporate franchise tax to other corporations to finance their Minnesota operations. To qualify, the selling or transferring corporation must have its headquarters or base of operations and between one and 250 full-time employees in Minnesota and must not have had positive operating income for financial reporting purposes in either of the two previous years. Applications must be made to and approved by the commissioner of the Department of Employment and Economic Development (DEED). The total annual amount of the tax benefits that may be transferred in any fiscal year is limited to $60 million. A $15 million maximum lifetime limit applies to each corporation.

1 **Technology corporate franchise tax certificate transfer program.** Establishes a technology tax benefits transfer program that allows emerging biotechnology and technology companies to sell their NOL carryovers to other corporations that can use them to reduce their Minnesota taxes.

Definitions. Defines the following terms:

- "**Biotechnology**" - is defined as knowledge, products, and technology related to biological systems.
- "**Biotechnology company**" - is an emerging corporation with a Minnesota headquarters and proprietary intellectual property that engages in research, development, or production of biotechnology for commercial or public purposes.
- "**Full-time employee**" - is defined as an employee of or a partner of a new or expanding biotechnology company who works at least 35 hours per week and who receives group health benefits from the biotechnology company. The term excludes independent contractors and consultants who are not employees.
- "**New or expanding**" - is defined as biotechnology company with fewer than 250 full-time employees on June 30th of the year and at least one full-time employee for a corporation that has been incorporated less than three years, or at least five full-time employees for

corporations incorporated for three, but less than five, years, or at least ten employees for all other corporations.

- **"Technology company" -** is defined as an emerging corporation that has its headquarters or base of operations in the state and owns proprietary intellectual property and employs highly educated or trained employees who use sophisticated scientific research service or production equipment, processes, or knowledge to discover, develop, test, transfer, or manufacture a product or service.

Qualifying corporations and computation of the transferrable tax benefit. Biotechnology or technology companies seeking to sell their NOL carryovers must apply to and obtain approval from DEED to do so. The corporation must certify that it intends to continue operating in the state and DEED can require the corporation to enter a written agreement regarding maintenance of its headquarters or base of operations in the state or other conditions. A $15 million lifetime limit applies to the amount of tax benefits that each corporation can sell/transfer. A corporation may not sell its tax benefits if:

- It had positive net operating income in either of the two previous years for financial reporting purposes; or

- It is 50 percent or more owned or controlled by another corporation that had positive net operating income in either of the two previous years for financial reporting purposes.

Sales of the tax benefits must equal at least 75 percent of the calculated amount of the tax benefit. The tax benefit amount is calculated by multiplying the NOL carryover by the transferor corporation's Minnesota apportionment percentage (i.e., the percentage used to determine what share of its income is subject to Minnesota tax) and by 9.8 percent, the statutory tax rate. The resulting amount is then allowed as a credit against the purchasing (transferee) corporation's Minnesota tax under section 3.

Annual limit. The total amount of the tax benefits that may be transferred in any fiscal year is limited to $60 million. If the applied for amount exceeds the cap, DEED is to allocate the tax benefits as follows to ensure that the total amount is within the annual limit:

- Applicants to transfer/sell $250,000 or less receive the full amount.

- Applicants for more than $250,000 receive $250,000 and all applications for amounts over $250,000 are proportionately reduced to keep the total within the $60 million limit. If the reduction of amounts over $250,000 is insufficient, then all amounts would be proportionately reduced.

Recapture. DEED is directed to establish rules for recapture of all or a part of the tax benefits for transferring corporations that fail to use the tax benefits as required (e.g., under an agreement required by DEED) or if it fails to maintain its headquarters or base of operations in Minnesota.

2 **Conforming change.** Provides that a corporation may not deduct NOLs that were transferred or sold under section 1.

3 **Tax credit.** Allows the amount of the transferred tax benefits under section 1 as a credit against tax liability for the recipient or purchasing corporation.