

CHAPTER 207 — H.F.No. 381

An act relating to taxation; adopting certain federal provisions relating to income taxes; updating certain references to the Internal Revenue Code; adopting certain federal provisions relating to the determination of interest rates on taxes; imposing penalties; amending Minnesota Statutes 1982, sections 270.75, subdivision 5; 290.01, subdivisions 20, 20a, as amended, 20b, as amended, 20c, and 20f; 290.05, subdivision 6; 290.068, subdivisions 3 and 4; 290.09, subdivisions 2, 7, as amended, and 29; 290.091; 290.10; 290.135, subdivision 1, as amended; 290.16, subdivisions 7 and 16; 290.17, subdivision 1; 290.26, subdivision 2; 290.37, by adding a subdivision; 290.41, subdivisions 3, 8, and by adding a subdivision; 290.45, subdivision 1; 290.48, by adding a subdivision; 290.53, subdivision 2, and by adding subdivisions; 290.92, subdivisions 7, 13, 15, and by adding a subdivision; 290.93, subdivisions 9, 10, and 11; 290.934, subdivision 4; 290.9725; 290.9726, subdivisions 5 and 6; 290.974; 290A.03, subdivision 3; proposing new law coded in Minnesota Statutes, chapter 290; repealing Minnesota Statutes 1982, section 290.01, subdivision 28.

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

Section 1. Minnesota Statutes 1982, section 270.75, subdivision 5, is amended to read:

Subd. 5. The rates of interest or amount in lieu of interest contained in subdivisions 1 to 4 shall be adjusted by the commissioner of revenue not later than October 15 of ~~1982~~ 1983 and any year thereafter if the adjusted prime rate charged by banks during ~~September~~ the six-month period ending on September 30 of that year, rounded to the nearest full percent, is at least a full percentage point more or less than the interest rate which is then in effect. The adjusted rate of interest or amount in lieu of interest shall be equal to the adjusted prime rate charged by banks, rounded to the nearest full percent, and shall become effective on January 1 of the immediately succeeding year except as provided in subdivision 4. For purposes of this subdivision, the term "adjusted prime rate charged by banks" means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System. The determination of the commissioner pursuant to this subdivision shall not be considered a "rule" and shall not be subject to the Administrative Procedure Act contained in chapter 14.

Sec. 2. Minnesota Statutes 1982, section 290.01, subdivision 20, is amended to read:

Subd. 20. **GROSS INCOME.** Except as otherwise provided in this chapter, the term "gross income," as applied to corporations includes every kind of compensation for labor or personal services of every kind from any private or public employment, office, position or services; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealing in, property; income derived from the transaction of any trade or business; and income derived from any source.

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The term "gross income" in its application to individuals, estates, and trusts shall mean the adjusted gross income as defined in the Internal Revenue Code of 1954, as amended through the date specified herein for the applicable taxable year, with the modifications specified in this subdivision and in subdivisions 20a to 20f. For estates and trusts the adjusted gross income shall be their federal taxable income as defined in the Internal Revenue Code of 1954, as amended through the date specified herein for the applicable taxable year, with the modifications specified in this subdivision and in subdivisions 20a to 20f, and with the modification that the federal deduction for personal exemptions for trusts and estates shall not be allowed.

(i) The Internal Revenue Code of 1954, as amended through December 31, 1976, including the amendments made to section 280A (relating to licensed day care centers) in H.R. 3477 as it passed the Congress on May 16, 1977, shall be in effect for the taxable years beginning after December 31, 1976. The provisions of the Tax Reform Act of 1976, P.L. 94-455, which affect adjusted gross income shall become effective for purposes of this chapter at the same time they become effective for federal income tax purposes.

The provisions of section 4 of P.L. 95-458, sections 131, 133, 134, 141, 152, 156, 157, 405, and 543 of P.L. 95-600, and section 2 of P.L. 96-608 (relating to pensions, individual retirement accounts, deferred compensation plans, the sale of a residence and to conservation payments to farmers) including the amendments made to these sections in P.L. 96-222 shall be effective at the same time that these provisions became effective for federal income tax purposes.

(ii) The Internal Revenue Code of 1954, as amended through December 31, 1979, shall be in effect for taxable years beginning after December 31, 1979.

(iii) The Internal Revenue Code of 1954, as amended through December 31, 1980, and as amended by sections 302(b) and 501 to 509 of Public Law Number 97-34, shall be in effect for taxable years beginning after December 31, 1980 including the provisions of section 404 (relating to partial exclusions of dividends and interest received by individuals) of the Crude Oil Windfall Profit Tax Act of 1980, P.L. 96-223. The provisions of P.L. 96-471 (relating to installment sales) sections 122, 123, 126, 201, 202, 203, 204, 211, 213, 214, 251, 261, 264, 265, 311(g)(3), 313, 314(a)(1), 321(a), 501 to 507, 811, and 812 of the Economic Recovery Tax Act of 1981, Public Law Number 97-34 and section 113 of Public Law Number 97-119 shall be effective at the same time that they become effective for federal income tax purposes.

(iv) The Internal Revenue Code of 1954, as amended through December 31, 1981, shall be in effect for taxable years beginning after December 31, 1981. The provisions of sections 205(a), 214 to 222, 231, 232, 236, 247, 251, 252, 253, 265, 266, 285, 288, and 335 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law Number 97-248, section 6(b)(2) and (3) of the Subchapter S Revision Act of 1982, Public Law Number 97-354, section 517 of Public Law

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Number 97-424, sections 101(c) and (d), 102(a), (aa), (f)(4), (g), (j), (l), 103(c), 104(b)(3), 105, 305(d), 306(a)(9) of Public Law Number 97-448, and sections 101 and 102 of Public Law Number 97-473 shall be effective at the same time that they become effective for federal income tax purposes.

(v) The Internal Revenue Code of 1954, as amended through January 15, 1983, shall be in effect for taxable years beginning after December 31, 1982.

References to the Internal Revenue Code of 1954 in subdivisions 20a, 20b, 20c, and 20e, and 20f shall mean the code in effect for the purpose of defining gross income for the applicable taxable year.

Sec. 3. Minnesota Statutes 1982, section 290.01, subdivision 20a, as amended by Laws 1982, Third Special Session chapter 1, article 5, section 1, is amended to read:

Subd. 20a. **MODIFICATIONS INCREASING FEDERAL ADJUSTED GROSS INCOME.** There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than Minnesota or a political subdivision of any other state exempt from federal income taxes under the Internal Revenue Code of 1954;

(2) A business casualty loss if the taxpayer elected to deduct the loss on the current year's federal income tax return but had deducted the loss on the previous year's Minnesota income tax return;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax;

(4) Interest on indebtedness incurred or continued to purchase or carry securities the income from which is exempt from tax under this chapter, to the extent deductible in determining federal adjusted gross income;

(5) Amounts received as reimbursement for an expense of sickness or injury which was deducted in a prior taxable year to the extent that the deduction for the reimbursed expenditure resulted in a tax benefit;

(6) The amount of any federal income tax overpayment for any previous taxable year, received as refund or credited to another taxable year's income tax liability, proportionate to the percentage of federal income tax that was claimed as a deduction in determining Minnesota income tax for the previous taxable year. The amount of the federal income tax overpayment shall be reported only to the extent that the amount resulted in a reduction of the tax imposed by this chapter.

The overpayment refund or credit, determined with respect to a husband and wife on a joint federal income tax return for a previous taxable year, shall be reported on joint, combined, or separate Minnesota income tax returns. In the

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case of combined or separate Minnesota returns, the overpayment shall be reported by each spouse proportionately according to the relative amounts of federal income tax claimed as a deduction on his or her combined or separate Minnesota income tax return for such previous taxable year;

(7) In the case of a change of residence from Minnesota to another state or nation, the amount of moving expenses which exceed total reimbursements and which were therefore deducted in arriving at federal adjusted gross income;

(8) The amount of any increase in the taxpayer's federal tax liability under section 47 of the Internal Revenue Code of 1954 to the extent of the credit under section 38 of the Internal Revenue Code of 1954 that was previously allowed as a deduction under subdivision 20b, clause (7);

(9) Expenses and losses arising from a farm which are not allowable under section 290.09, subdivision 29;

(10) Expenses and depreciation attributable to substandard buildings disallowed by section 290.101;

(11) The amount by which the gain determined pursuant to section 41.59, subdivision 2 exceeds the amount of such gain included in federal adjusted gross income;

(12) To the extent deducted in computing the taxpayer's federal adjusted gross income for the taxable year, losses recognized upon a transfer of property to the spouse or former spouse of the taxpayer in exchange for the release of the spouse's marital rights;

(13) Interest income from qualified scholarship funding bonds as defined in section 103(e) of the Internal Revenue Code of 1954, if the nonprofit corporation is domiciled outside of Minnesota;

(14) Exempt-interest dividends, as defined in section 852(b)(5)(A) of the Internal Revenue Code of 1954, not included in federal adjusted gross income pursuant to section 852(b)(5)(B) of the Internal Revenue Code of 1954, except for that portion of exempt-interest dividends derived from interest income on obligations of the state of Minnesota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities;

(15) The amount of any excluded gain recognized by a trust on the sale or exchange of property as defined in section 641(c)(1) of the Internal Revenue Code of 1954;

(16) To the extent not included in the taxpayer's federal adjusted gross income, the amount of any gain, from the sale or other disposition of property having a lower adjusted basis for Minnesota income tax purposes than for federal income tax purposes. This modification shall not exceed the difference in basis. If the gain is considered a long term capital gain for federal income tax purposes,

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the modification shall be limited to 40 percent of the portion of the gain. This modification is limited to property that qualified for the energy credit contained in section 290.06, subdivision 14, and to property acquired in exchange for the release of the taxpayer's marital rights contained in section 290.14, clause (7);

(17) The amount of any loss from a source outside of Minnesota which is not allowed under section 290.17 including any capital loss or net operating loss carryforwards or carrybacks resulting from the loss;

(18) The amount of a distribution from an individual housing account which is to be included in gross income as required under section 290.08, subdivision 25;

(19) To the extent deducted in computing the taxpayer's federal adjusted gross income, interest, taxes and other expenses which are not allowed under section 290.10, clause (9) or (10);

(20) To the extent excluded from federal adjusted gross income, in the case of a city manager or city administrator who elects to be excluded from the public employees retirement association and who makes contributions to a deferred compensation program pursuant to section 353.028, the amount of contributions made by the city manager or administrator which is equal to the amount which would have been the city manager's or administrator's employee contribution pursuant to section 353.27, subdivision 2, if he were a member of the public employees retirement association;

(21) The deduction for two-earner married couples provided in section 221 of the Internal Revenue Code of 1954;

(22) Interest on all-savers certificates which is excluded under section 128 of the Internal Revenue Code of 1954;

(23) Losses from the business of mining as defined in section 290.05, subdivision 1, clause (a) which is not subject to the Minnesota income tax;

(24) Expenses and depreciation attributable to property subject to Laws 1982, chapter 523, article 7, section 3 which has not been registered;

(25) The amount of contributions to an individual retirement account, including a qualified voluntary employee contribution, simplified employee pension plan, or self-employed retirement plan which is allowed under sections 311 and 312 of Public Law Number 97-34, section 238 of Public Law Number 97-248, and section 103(d)(1)(B) of Public Law Number 97-448 to the extent those contributions were not an allowable deduction prior to the enactment of that law; and

(26) To the extent deducted in computing federal adjusted gross income, living expenses of a member of congress in excess of that allowable under section 290.09, subdivision 2, clause (a)(3); and

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(27) To the extent not included in the taxpayer's federal adjusted gross income, the amount of any contributions to a qualified pension plan, designated as employee contributions but which the employing unit picks up and which are treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code of 1954.

Sec. 4. Minnesota Statutes 1982, section 290.01, subdivision 20b, as amended by Laws 1982, Third Special Session chapter 1, article 5, section 2, is amended to read:

Subd. 20b. **MODIFICATIONS REDUCING FEDERAL ADJUSTED GROSS INCOME.** There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income tax under the laws of the United States;

(2) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis for Minnesota income tax purposes than for federal income tax purposes, that does not exceed such difference in basis; but if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to 40 per centum of the portion of the gain. This modification shall not be applicable if the difference in basis is due to disallowance of depreciation pursuant to section 290.101.

(3) Income from the performance of personal or professional services which is subject to the reciprocity exclusion contained in section 290.081, clause (a);

(4) Losses, not otherwise reducing federal adjusted gross income assignable to Minnesota, arising from events or transactions which are assignable to Minnesota under the provisions of sections 290.17 to 290.20, including any capital loss or net operating loss carryforwards or carrybacks or out of state loss carryforwards resulting from the losses, and including any farm loss carryforwards or carrybacks;

(5) If included in federal adjusted gross income, the amount of any credit received, whether received as a refund or credit to another taxable year's income tax liability, pursuant to chapter 290A, and the amount of any overpayment of income tax to Minnesota, or any other state, for any previous taxable year, whether the amount is received as a refund or credited to another taxable year's income tax liability;

(6) To the extent included in federal adjusted gross income, or the amount reflected as the ordinary income portion of a lump sum distribution under section 402(e) of the Internal Revenue Code of 1954, notwithstanding any other law to the contrary, the amount received by any person (i) from the United States, its

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agencies or instrumentalities, the Federal Reserve Bank or from the state of Minnesota or any of its political or governmental subdivisions or from any other state or its political or governmental subdivisions, or a Minnesota volunteer firefighter's relief association, by way of payment as a pension, public employee retirement benefit, or any combination thereof, or (ii) as a retirement or survivor's benefit made from a plan qualifying under section 401, 403, 404, 405, 408, 409 or 409A of the Internal Revenue Code of 1954. The maximum amount of this subtraction shall be \$11,000 less the amount by which the individual's federal adjusted gross income, plus the ordinary income portion of a lump sum distribution as defined in section 402(e) of the Internal Revenue Code of 1954, exceeds \$17,000. In the case of a volunteer firefighter who receives an involuntary lump sum distribution of his pension or retirement benefits, the maximum amount of this subtraction shall be \$11,000; this subtraction shall not be reduced by the amount of the individual's federal adjusted gross income in excess of \$17,000;

(7) The amount of any credit to the taxpayer's federal tax liability under section 38 of the Internal Revenue Code of 1954 but only to the extent that the credit is connected with or allocable against the production or receipt of income included in the measure of the tax imposed by this chapter;

(8) To the extent included in the taxpayer's federal adjusted gross income for the taxable year, gain recognized upon a transfer of property to the spouse or former spouse of the taxpayer in exchange for the release of the spouse's marital rights;

(9) The amount of any distribution from a qualified pension or profit sharing plan included in federal adjusted gross income in the year of receipt to the extent of any contribution not previously allowed as a deduction by reason of a change in federal law which was not adopted by Minnesota law for a taxable year beginning in 1974 or later;

(10) Interest, including payment adjustment to the extent that it is applied to interest, earned by the seller of the property on a family farm security loan executed before January 1, 1986 that is guaranteed by the commissioner of agriculture as provided in sections 41.51 to 41.60;

(11) The first \$3,000 of compensation for personal services in the armed forces of the United States or the United Nations, and the next \$2,000 of compensation for personal services in the armed forces of the United States or the United Nations wholly performed outside the state of Minnesota. This modification does not apply to compensation defined in subdivision 20b, clause (6);

(12) The amount of any income earned for personal services rendered outside of Minnesota prior to the date when the taxpayer became a resident of Minnesota. This modification does not apply to compensation defined in subdivision 20b, clause (6);

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(13) In the case of wages or salaries paid or incurred on or after January 1, 1977, the amount of any credit for employment of certain new employees under sections 44B and 51 to 53 of the Internal Revenue Code of 1954 which is claimed as a credit against the taxpayer's federal tax liability, but only to the extent that the credit is connected with or allocable against the production or receipt of income included in the measure of the tax imposed by this chapter;

(14) In the case of work incentive program expenses paid or incurred on or after January 1, 1979, the amount of any credit for expenses of work incentive programs under sections 40, 50A and 50B of the Internal Revenue Code of 1954 which is claimed as a credit against the taxpayer's federal tax liability, but only to the extent that the credit is connected with or allocable against the production or receipt of income included in the measure of the tax imposed by this chapter;

(15) Unemployment compensation to the extent includible in gross income for federal income tax purposes under section 85 of the Internal Revenue Code of 1954;

(16) To the extent included in federal adjusted gross income, severance pay that may be treated as a lump sum distribution under the provisions of section 290.032, subdivision 5;

(17) The amount of any income or gain which is not assignable to Minnesota under the provisions of section 290.17;

(18) Minnesota exempt-interest dividends as provided by subdivision 27;

(19) A business casualty loss which the taxpayer elected to deduct on the current year's Minnesota income tax return but did not deduct on the current year's federal income tax return;

(20) To the extent included in federal adjusted gross income, in the case of a city manager or city administrator who elects to be excluded from the public employees retirement association and who makes contributions to a deferred compensation program pursuant to section 353.028, the amount of payments from the deferred compensation program equivalent to the amount of contributions taxed under subdivision 20a, clause (20);

(21) Contributions to and interest earned on an individual housing account as provided by section 290.08, subdivision 25;

(22) Interest earned on a contract for deed entered into for the sale of property for agricultural use if the rate of interest set in the contract is no more than nine percent per year for the duration of the term of the contract. This exclusion shall be available only if (1) the purchaser is an individual who, together with his spouse and dependents, has a total net worth valued at less than \$150,000 and (2) the property sold under the contract is farm land as defined in section 41.52, subdivision 6 of no more than 1,000 acres that the purchaser intends to use for agricultural purposes. Compliance with these requirements

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shall be stated in an affidavit to be filed with the first income tax return on which the taxpayer claims the exclusion provided in this clause. Upon request accompanied by the information necessary to make the determination, the commissioner shall determine whether interest to be paid on a proposed transaction will qualify for this exclusion; the determination shall be provided within 30 days of receipt of the request, unless the commissioner finds it necessary to obtain additional information, or verification of the information provided, in which case the determination shall be provided within 30 days of receipt of the final item of information or verification. The exclusion provided in this clause shall apply to interest earned on contracts for deed entered into after December 31, 1981 and before July 1, 1983;

(23) The penalty on the early withdrawal of an all-savers certificate as provided in section 128(e) of the Internal Revenue Code of 1954 to the extent that the interest was included in income under subdivision 20a, clause (22);

(24) Income from the business of mining as defined in section 290.05, subdivision 1, clause (a) which is not subject to the Minnesota income tax; and

(25) To the extent included in federal adjusted gross income, distributions from a qualified governmental pension plan which represent a return of designated employee contributions to the plan and which contributions were included in gross income pursuant to subdivision 20a, clause ~~(27)~~ (26).

Sec. 5. Minnesota Statutes 1982, section 290.01, subdivision 20c, is amended to read:

Subd. 20c. **MODIFICATION FOR SHAREHOLDERS OF SMALL BUSINESS CORPORATIONS.** A modification affecting shareholders of electing small business corporations under section 1372 of the Internal Revenue Code of 1954, as it existed prior to October 19, 1982, shall be made where the election under section 1372 of the Internal Revenue Code of 1954, as it existed prior to October 19, 1982, antedates the election under this chapter and at the close of the taxable year immediately preceding the effective election under this chapter the corporation has a reserve of undistributed taxable income previously taxed to shareholders under the provisions of the Internal Revenue Code of 1954, as it existed prior to October 19, 1982, in the event and to the extent that the reserve is distributed to shareholders the distribution shall be taxed as a dividend for purposes of this chapter.

Sec. 6. Minnesota Statutes 1982, section 290.01, subdivision 20f, is amended to read:

Subd. 20f. **MODIFICATION FOR ACCELERATED COST RECOVERY SYSTEM.** A modification shall be made for the allowable deduction under the accelerated cost recovery system as provided in subdivision 28. The allowable deduction for the accelerated cost recovery system as provided in section 168

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of the Internal Revenue Code shall be the same amount as provided in that section for individuals, estates, and trusts with the following modifications:

(1) For property placed in service after December 31, 1980, and for taxable years beginning before January 1, 1982, 15 percent of the allowance provided in section 168 of the Internal Revenue Code shall not be allowed.

(2)(a) For taxable years beginning after December 31, 1981, and before December 31, 1982, for 15 year real property as defined in section 168 of the Internal Revenue Code, 40 percent of the allowance provided in section 168 of the Internal Revenue Code shall not be allowed and for all other property, 17 percent of the allowance shall not be allowed.

(b) For taxable years beginning after December 31, 1982, for 15 year real property as defined in section 168 of the Internal Revenue Code, 40 percent of the allowance provided in section 168 of the Internal Revenue Code shall not be allowed and for all other property 20 percent of the allowance shall not be allowed.

(3) For property placed in service after December 31, 1980, for which the taxpayer elects to use the straight line method provided in section 168(b)(3) or a method provided in section 168(e)(2) of the Internal Revenue Code, the modifications provided in clauses (1) and (2) do not apply.

(4) For property subject to the modifications contained in clause (1) or (2) above, the following modification shall be made after the entire amount of the allowable deduction for that property under the provision of section 168 of the Internal Revenue Code has been obtained. The remaining depreciable basis in those assets for Minnesota purposes shall be a depreciation allowance computed by using the straight line method over the following number of years:

(a) 3 year property - 1 year.

(b) 5 year property - 2 years.

(c) 10 year property - 5 years.

(d) All 15 year property - 7 years.

(5) The basis of property to which section 168 of the Internal Revenue Code applies shall be its basis as provided in this chapter and including the modifications provided in this subdivision. The recapture tax provisions provided in sections 1245 and 1250 of the Internal Revenue Code shall apply but shall be calculated using the basis provided in the preceding sentence. When an asset is exchanged for another asset including an involuntary conversion and under the provision of the Internal Revenue Code gain is not recognized in whole or in part on the exchange of the first asset, the basis of the second asset shall be the same as its federal basis provided that the difference in basis due to clause (1) or (2) can be written off as provided in clause (4).

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(6) The modifications provided in this subdivision shall apply before applying any limitation to out of state losses contained in section 290.17 or farm losses contained in section 290.09, subdivision 29.

(7) After the entire amount of the allowable deduction for that property under the provisions of section 168 of the Internal Revenue Code has been obtained, the remaining depreciable basis in those assets for Minnesota purposes that shall be allowed as provided in clause (4) shall include the amount of any basis reduction made for federal purposes under section 48(q) of the Internal Revenue Code to reflect the investment tax credit. No amount shall be allowed as a deduction under section 196 of the Internal Revenue Code.

Sec. 7. Minnesota Statutes 1982, section 290.05, subdivision 6, is amended to read:

Subd. 6. The Internal Revenue Code referred to in any of the subdivisions of this section means the Internal Revenue Code of 1954, as amended through ~~December 31, 1981~~ January 15, 1983.

Sec. 8. Minnesota Statutes 1982, section 290.068, subdivision 3, is amended to read:

Subd. 3. **LIMITATION; CARRYBACK AND CARRYOVER.** (a)(1) The credit for the taxable year shall not exceed the liability for tax. "Liability for tax" for purposes of this section means the tax imposed under this chapter for the taxable year reduced by the sum of the credits allowed under section 290.06, except the credit allowed under section 290.06, subdivision 13.

(2) In the case of an individual who

(A) owns an interest in an unincorporated business,

(B) is a partner in a partnership,

(C) is a beneficiary of an estate or trust, or

(D) is a shareholder in a ~~small business corporation, having a valid election in effect under section 1372 of the Internal Revenue Code an S corporation,~~

the credit allowed for the taxable year shall not exceed the lesser of the amount determined under clause (1) for the taxable year or an amount (separately computed with respect to such person's interest in the trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in the trade or business or entity.

(b) If the amount of the credit determined under this section for any taxable year exceeds the limitation under clause (a), the excess shall be a research credit carryback to each of the three preceding taxable years and a research credit

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carryover to each of the 15 succeeding taxable years. The entire amount of the excess unused credit for the taxable year shall be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried. The amount of the unused credit which may be added under this clause shall not exceed the taxpayer's liability for tax less the research credit for the taxable year.

For the purposes of sections 290.46 and 290.50, if the claim for refund relates to an overpayment attributable to a research and experimental expenditure credit carryback under this subdivision, in lieu of the period of limitation prescribed in sections 290.46 and 290.50, the period of limitation shall be that period which ends with the expiration of the 15th day of the 46th month, or the 45th month, in the case of a corporation, following the end of the taxable year in which the research and experimental expenditure credit arises which results in the carryback. In any case in which a taxpayer is entitled to a refund in a carryback year due to the carryback of a research and experimental expenditure credit, interest shall be computed only from the end of the taxable year in which the credit arises.

Sec. 9. Minnesota Statutes 1982, section 290.068, subdivision 4, is amended to read:

Subd. 4. **SMALL BUSINESS CORPORATIONS ESTATES AND TRUSTS; PARTNERSHIPS.** In the case of ~~small business corporations, having a valid election in effect, under section 1372 of the Internal Revenue Code of 1954,~~ estates and trusts, and partnerships, the credit shall be allocated in the same manner provided by section 44F(f)(2) of the Internal Revenue Code.

Sec. 10. Minnesota Statutes 1982, section 290.09, subdivision 2, is amended to read:

Subd. 2. **TRADE OR BUSINESS EXPENSES; EXPENSES FOR PRODUCTION OF INCOME.** (a) In General. There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including

(1) A reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) Traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) Rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity. For purposes of the preceding sentence, the place of residence of a member of congress within the state shall be considered his home, but amounts

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expended by such members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000.

(b) Expenses for Production of Income. In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year.

(1) For the production or collection of income;

(2) For the management, conservation, or maintenance of property held for the production of income; or

(3) In connection with the determination, collection, or refund of any tax.

(c) Actual campaign expenditures in an amount not to exceed one-third of the salary of the office sought, for the year the election is held, by the candidate, but no less than \$100, not reimbursed, which have been personally paid by a candidate for public office;

(d) No deduction shall be allowed under this subdivision for any contribution or gift which would be allowable as a deduction under section 290.21 were it not for the percentage limitations set forth in such section;

(e) All expense money paid by the legislature to legislators;

(f) The provisions of section 280A (disallowing certain expenses in connection with the business use of the home and rental of vacation homes) of the Internal Revenue Code of 1954, as amended through December 31, ~~1981~~ 1982, shall be applicable in determining the availability of any deduction under this subdivision.

(g) Entertainment, amusement, or recreation expenses shall be allowed under this subdivision only to the extent that they qualify as a deduction under section 274 of the Internal Revenue Code of 1954, as amended through December 31, ~~1981~~ 1982.

(h) No deduction shall be allowed under this subdivision for illegal bribes, kickbacks, and other payments, fines, and penalties, or treble damage payments under the antitrust laws except as provided in section 162 of the Internal Revenue Code of 1954, as amended through December 31, 1982.

Sec. 11. Minnesota Statutes 1982, section 290.09, subdivision 7, as amended by Laws 1982, Third Special Session chapter 1, article 7, section 2, is amended to read:

Subd. 7. **DEPRECIATION. (A) CUMULATIVE DEPRECIATION.**
(a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence):

(1) of property used in the trade or business, or

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(2) of property held for the production of income.

In the case of recovery property as provided in clause (c), the deduction allowable under clause (c) shall be deemed to constitute the reasonable allowance provided by this subdivision, except for the provisions of Part (B) relating to first year depreciation and except with respect to that portion of the basis of the property to which section 167(k) of the Internal Revenue Code of 1954, as amended through January 15, 1983, applies.

(b) The term "reasonable allowance" as used in clause (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the commissioner, under any of the following methods:

(1) the straight line method.

(2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) the sum of the years-digits method, and

(4) any other consistent method productive of an annual allowance, which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in (2). Nothing in this clause (b) shall be construed to limit or reduce an allowance otherwise allowable under clause (a).

(c) For purposes of this subdivision "reasonable allowance" shall include be the accelerated cost recovery system provisions of section 168 of the Internal Revenue Code of 1954, as amended through ~~December 1, 1982~~ January 15, 1983, except as provided in this subdivision. In the case of recovery property within the meaning of section 168 of the Internal Revenue Code of 1954, as amended through ~~December 1, 1982~~ January 15, 1983, the term "reasonable allowance" as used in clause (a) shall mean 85 percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954 for property placed in service after December 31, 1980 and for taxable years beginning before January 1, 1982.

For taxable years beginning after December 31, 1981 the term reasonable allowance as used in clause (a) shall mean the following percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954, as amended through ~~December 1, 1982~~ January 15, 1983:

(1) For 3, 5 and 10 year property and for 15 year public utility property the allowable percentage is 83 percent and 80 percent for taxable years beginning after December 31, 1982.

(2) For 15 year real property the allowable percentage is 60 percent.

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For property placed in service after December 31, 1980 the term "reasonable allowance" as used in clause (a) shall mean 100 percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954 where the taxpayer uses for federal income tax purposes the straight line method provided in section 168(b)(3) or a method provided in section 168(e)(2) of the Internal Revenue Code of 1954, as amended through ~~December 4, 1982~~ January 15, 1983. For property placed in service after December 31, 1980 and for which the full amount of the deduction allowed under section 168 of the Internal Revenue Code of 1954, as amended through ~~December 4, 1982~~ January 15, 1983 has been allowed, the remaining depreciable basis in those assets for Minnesota purposes shall be a depreciation allowance computed by using the straight line method over the following number of years:

- (1) 3 year property - 1 year.
- (2) 5 year property - 2 years.
- (3) 10 year property - 5 years.
- (4) All 15 year property - 7 years.

When an asset is exchanged for another asset including an involuntary conversion and under the provision of the Internal Revenue Code gain is not recognized in whole or in part on the exchange of the first asset, the basis of the second asset shall be the same as its federal basis provided that the difference in basis due to the limitations provided in this clause can be written off as provided in the preceding sentence.

After the full amount of the allowable deduction for that property under the provision of section 168 of the Internal Revenue Code of 1954, as amended through January 15, 1983, has been obtained, the remaining depreciable basis in those assets for Minnesota purposes that shall be allowed as a depreciation allowance as provided above shall include the amount of any basis reduction made for federal purposes under section 48(q) of the Internal Revenue Code, as amended through January 15, 1983, to reflect the investment tax credit. No amount shall be allowed as a deduction under section 196 of the Internal Revenue Code of 1954, as amended through January 15, 1983.

The provisions of section 168(i)(4) of the Internal Revenue Code of 1954, as amended through ~~December 4, 1982~~ January 15, 1983 shall apply to restrict research credit carrybacks and net operating loss carrybacks which are allocable to elected qualified leased property, notwithstanding section 290.068, subdivision 3, or 290.095, subdivision 3.

The modification provided in this clause shall apply before applying a limitation on farm losses as contained in subdivision 29.

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(d) Paragraphs (2), (3), and (4) of clause (b) shall apply only in the case of property (other than intangible property) described in clause (a) with a useful life of three years or more.

(1) the construction, reconstruction, or erection of which is completed after December 31, 1958, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1958, or

(2) acquired after December 31, 1958, if the original use of such property commenced with the taxpayer and commences after such date.

(e) Where, under ~~regulations~~ rules prescribed by the commissioner, the taxpayer and the commissioner have, after June 30, 1959, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the commissioner in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail is served by the party to the agreement initiating such change. This clause shall not apply with respect to recovery property as defined in clause (c).

(f) In the absence of an agreement under clause (e) containing a provision to the contrary, a taxpayer may at any time elect in accordance with ~~regulations~~ rules prescribed by the commissioner to change from the method of depreciation prescribed in clause (b)(2) to the method described in clause (b)(1).

(g) The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in this chapter for the purpose of determining the gain on the sale or other disposition of such property.

(B) FIRST YEAR DEPRECIATION. The term "reasonable allowance" as used in this subdivision may, at the election of the taxpayer, include an amount as provided under section 179 of the Internal Revenue Code of 1954, as amended through ~~December 4, 1982~~ January 15, 1983.

Sec. 12. Minnesota Statutes 1982, section 290.09, subdivision 29, is amended to read:

Subd. 29. **DEDUCTIONS ATTRIBUTABLE TO FARMING.** (a) **DEFINITIONS.** For purposes of this subdivision, income and gains and expenses and losses shall be considered as "arising from a farm" if such items are received or incurred in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising,

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shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, and all operations incident thereto, including but not limited to the common use of "hedging."

(b) **DEDUCTIONS LIMITED.** Except as provided in this subdivision, expenses and losses, except for interest and taxes, arising from a farm shall not be allowed as deductions in excess of income and gains arising from a farm.

(c) **DEDUCTIONS ALLOWED; CARRYOVER DEDUCTIONS.** Expenses and losses arising from a farm or farms shall be allowed as deductions up to the amount of the income and gains arising from a farm or farms in any taxable year, plus the first \$15,000 of nonfarm gross income, or nonfarm taxable net income in the case of a corporation, provided however that in any case where nonfarm income exceeds \$15,000, the maximum allowable amount of \$15,000 shall be reduced by twice the amount by which the nonfarm income exceeds the amount of \$15,000. For this purpose and for the purpose of applying the limitation in the following paragraph regarding the application of any carryback or carryforward, the term gross income shall include the ordinary income portion of a lump sum distribution as defined in section 402(e) of the Internal Revenue Code of 1954, as amended through December 31, 1981, and no deduction shall be allowed for two-earner married couples as provided in section 221 of the Internal Revenue Code of 1954, as amended through December 31, 1981. Any remaining balance of the deductions shall be carried back three years and carried forward five years, in chronological order, provided, however, that in any case in which any individual, estate or trust which elects a net operating loss carryforward under section 172(b)(3)(C) of the Internal Revenue Code of 1954, as amended through December 31, 1981, such losses shall not be carried back but shall only be carried forward.

Current expenses and losses shall be utilized as deductions in any taxable year, to the extent herein allowable, prior to the application of any carryback or carryover deductions. In any event, the combined amounts of such current expenses and losses and carryback or carryover deductions shall be allowed as deductions up to the amount of the income and gains arising from a farm or farms in any taxable year, plus the first \$15,000 of nonfarm gross income, or nonfarm taxable net income in the case of a corporation, provided however that in any case where nonfarm income exceeds \$15,000, the maximum allowable amount of \$15,000 shall be reduced by twice the amount by which the nonfarm income exceeds the amount of \$15,000.

(d) **SHAREHOLDERS SEPARATE ENTITIES.** For purposes of this subdivision, individual shareholders of an electing small business corporation ~~S corporation~~ shall be considered separate entities.

(e) **SPECIAL PERIOD OF LIMITATION WITH RESPECT TO FARM LOSS LIMITATION CARRYBACKS.** For the purposes of sections 290.46 and 290.50, if the claim for refund relates to an overpayment attributable

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to a farm loss limitation carryback under this subdivision, in lieu of the period of limitation prescribed in sections 290.46 and 290.50, the period of limitation shall be that period which ends with the expiration of the 15th day of the 46th month (or the 45th month, in the case of a corporation) following the end of the taxable year of the farm loss which results in the carryback.

(f) **INTEREST ON CLAIMS.** In any case in which a taxpayer is entitled to a refund in a carryback year due to the carryback of a farm loss, interest shall be computed only from the end of the taxable year in which the loss occurs.

(g) **ORDER OF APPLICATION.** The application of this subdivision shall be made after applying any limitation to out of state losses contained in section 290.17.

Sec. 13. Minnesota Statutes 1982, section 290.091, is amended to read:

290.091 MINIMUM TAX ON PREFERENCE ITEMS.

In addition to all other taxes imposed by this chapter there is hereby imposed, a tax which, in the case of a resident individual, shall be equal to 40 percent of the amount of the taxpayer's minimum tax liability for tax preference items pursuant to the provisions of sections 55 to 58 and 443(d) of the Internal Revenue Code of 1954 as amended through ~~December 31, 1984~~ January 15, 1983. For purposes of the tax imposed by this section, the following modifications shall be made:

(1) Capital gain as defined in section 57(a) of the Internal Revenue Code shall not include that portion of any gain occasioned by sale, transfer or the granting of a perpetual easement pursuant to any eminent domain proceeding or threat thereof as described in section 290.13, subdivision 5. This modification shall apply to the years in which the gain or reduction in loss is actually included in federal adjusted gross income even though amounts received pursuant to the eminent domain proceedings were received in prior years.

(2) In the case of a corporate taxpayer, percentage depletion shall not be a preference item.

(3) In the case of a corporate taxpayer, the capital gain preference item shall not include the timber preference income defined in section 57(e)(1) of the Internal Revenue Code.

(4) The preference item of reserves for losses on bad debts shall not include reserves allowable under section 593 of the Internal Revenue Code, but which are not allowable under section 290.09, subdivision 6, clause (c).

(5) In the case of an individual, ~~the preference item of adjusted itemized deductions does not include any deduction for charitable contributions in excess of the limitations contained in section 290.21, subdivision 3, including any carryover amount allowed for federal purposes~~ alternative tax itemized deduc-

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tions shall include the amount allowable as a deduction for the taxable year under section 164 of the Internal Revenue Code for Minnesota income tax paid or accrued.

(6) The capital gain preference item shall be reduced where the gain would be modified because some or all of the assets have a higher basis for Minnesota purposes than for federal purposes.

(7) In the case of a nonresident individual, or an estate or trust, with a net operating loss that is a larger amount for Minnesota than for federal, the capital gain preference item shall be reduced to the extent it was reduced in the allowance of the net operating loss.

(8) Federal preference items from the business of mining or producing iron ore and other ores which are subject to the occupation tax and exempt from taxation under section 290.05, subdivision 1, shall not be a preference item for Minnesota.

(9) In the case of a corporate taxpayer, amortization of certified pollution control facilities, shall not be a preference item.

In the case of a resident individual, having preference items which could not be taken to reduce income from sources outside the state pursuant to section 290.17, subdivision 1, or any other taxpayer the tax shall equal 40 percent of that federal liability, multiplied by a fraction the numerator of which is the amount of the taxpayer's preference item income allocated to this state pursuant to the provisions of sections 290.17 to 290.20, and the denominator of which is the taxpayer's total preference item income for federal purposes.

The tax benefit rule contained in section 58(h) of the Internal Revenue Code is applied to the Minnesota minimum tax only to the extent that it determines if there is a federal minimum tax. No separate tax benefit rule is allowable for the Minnesota minimum tax.

For property placed in service after December 31, 1980, the preference items contained in section 57 (a)(12) of the Internal Revenue Code of 1954, as amended through ~~December 31, 1981~~ January 15, 1983, shall not apply.

Sec. 14. Minnesota Statutes 1982, section 290.10, is amended to read:
290.10 **NONDEDUCTIBLE ITEMS.**

In computing the net income no deduction shall in any case be allowed for:

- (1) Personal, living or family expenses;
- (2) Amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, except as otherwise provided in this chapter;

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(3) Amounts expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;

(4) Premiums paid on any life insurance policy covering the life of the taxpayer or of any other person;

(5) The shrinkage in value, due to the lapse of time, of a life or terminable interest of any kind in property acquired by gift, devise, bequest or inheritance;

(6) Losses from sales or exchanges of property, directly or indirectly, between related taxpayers as defined and as provided in section 267 of the Internal Revenue Code of 1954, as amended through December 31, ~~1981~~ 1982;

(7) In computing net income, no deduction shall be allowed under section 290.09, subdivision 2, relating to expenses incurred or under section 290.09, subdivision 3, relating to interest accrued as provided in section 267~~(a)(2)~~ and (e) of the Internal Revenue Code of 1954, as amended through December 31, ~~1981~~ 1982;

(8) (a) Contributions by employees under the federal railroad retirement act and the federal social security act. (b) Payments to Minnesota or federal public employee retirement funds. (c) Three-fourths (75 percent) of the amount of taxes imposed on self-employment income under section 1401 of the Internal Revenue Code of 1954, as amended through December 31, ~~1981~~ 1982.

(9) Expenses, interest and taxes connected with or allocable against the production or receipt of all income not included in the measure of the tax imposed by this chapter.

(10) In situations where this chapter provides for a subtraction from gross income of a specific dollar amount of an item of income assignable to this state, and within the measure of the tax imposed by this chapter, that portion of the federal income tax liability assessed upon such income subtracted, and any expenses attributable to earning such income, shall not be deductible in computing net income.

(11) Amounts paid or accrued for such taxes and carrying charges as, under ~~regulations~~ rules prescribed by the commissioner, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such ~~regulations~~ rules, to treat such taxes or charges as so chargeable.

(12) No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if the trade or business (or the activities which comprise the trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the federal Controlled Substances Act) which is prohibited by federal law or the law of Minnesota.

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Sec. 15. Minnesota Statutes 1982, section 290.135, subdivision 1, as amended by Laws 1982, Third Special Session chapter 1, article 7, section 7, is amended to read:

Subdivision 1. **GENERAL RULE.** Gain or loss shall be recognized to a corporation on the distribution of property in partial or complete liquidation as provided in sections 336 to 346 of the Internal Revenue Code of 1954, as amended through ~~December 1, 1982~~ January 15, 1983.

Sec. 16. Minnesota Statutes 1982, section 290.16, subdivision 7, is amended to read:

Subd. 7. **BONDS, OTHER EVIDENCES OF INDEBTEDNESS.** For the purpose of this section, the treatment of amounts received by the holder upon the retirement of bonds, debentures, notes or certificates or other evidences of indebtedness, which are capital assets in the hands of the taxpayer, shall be governed by the provisions of section 1232 of the Internal Revenue Code of 1954, as amended through ~~December 31, 1981~~ January 15, 1983. The provisions of section 1232A of the Internal Revenue Code of 1954, as amended through December 31, 1982, shall apply to determine the amount of the original issue discount which shall be included in gross income. The tax treatment of stripped bonds shall be governed by the provisions of section 1232B of the Internal Revenue Code of 1954, as amended through December 31, 1982.

Sec. 17. Minnesota Statutes 1982, section 290.16, subdivision 16, is amended to read:

Subd. 16. **GAIN FROM DISPOSITION OF CERTAIN DEPRECIABLE REALTY.** For purposes of this subdivision "depreciable realty" shall mean "Section 1250 realty" as that phrase is defined in Section 1250(c) of the Internal Revenue Code of 1954, as amended through ~~December 31, 1981~~ January 15, 1983.

In determining net income of any corporate taxpayer, the gain realized from the disposition of "depreciable realty" shall be treated in the same manner as is provided by Section sections 1250 and 291 of the Internal Revenue Code of 1954, as amended through ~~December 31, 1981~~ January 15, 1983, and regulations rules adopted pursuant thereto except that the determination shall be made using the basis computed under this chapter.

Sec. 18. Minnesota Statutes 1982, section 290.17, subdivision 1, is amended to read:

Subdivision 1. **INCOME OF RESIDENT INDIVIDUALS.** The gross income of individuals during the period of time when they are residents of Minnesota shall be their gross income as defined in section 290.01, subdivision 20, except that the amount of otherwise deductible losses incurred in connection with income derived from sources outside the state shall be reduced by the sum of

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the taxpayer's items of tax preference as defined in section 57, as limited by section 58(i)(7) of the Internal Revenue Code of 1954, as amended through December 31, 1981 1982, which are attributable to losses incurred in connection with sources of income outside the state.

Sec. 19. Minnesota Statutes 1982, section 290.26, subdivision 2, is amended to read:

Subd. 2. **EMPLOYER CONTRIBUTIONS.** Contributions of an employer to an employee's trust or annuity plan and compensation under a deferred-payment plan or to a simplified employee pension shall be allowed as a deduction in accordance with the provisions of section 404 or 408(k) of the Internal Revenue Code of 1954, as amended through December 31, 1981 1982, as adapted to the provisions of this chapter under rules issued by the commissioner of revenue.

Sec. 20. Minnesota Statutes 1982, section 290.37, is amended by adding a subdivision to read:

Subd. 4. **FURNISHING OF SOCIAL SECURITY NUMBER; PENALTY.** (a) Any individual with respect to whom a return, statement, or other document is required under this chapter to be made by another person shall furnish to that other person the individual's social security account number. Any person required under this chapter to make a return, statement, or other document with respect to another person who is an individual shall request from that individual and shall include in the return, statement, or other document, the individual's social security account number. A return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each individual beneficiary of the estate or trust, otherwise a return of any individual with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered as a return, statement, or other document with respect to another person.

(b) If any person who is required under clause (a) to (1) furnish his social security account number to another person, or (2) include in any return, statement, or other document made with respect to another person who is an individual the social security account number of that individual; fails to comply with the requirement at the time prescribed, that person shall, unless it is shown that the failure is due to reasonable cause and not to willful neglect, pay a penalty of \$50 for each failure except that the total amount imposed on a person for all failures during any calendar year shall not exceed \$25,000.

Sec. 21. Minnesota Statutes 1982, section 290.41, subdivision 3, is amended to read:

Subd. 3. **BY BROKERS.** The commissioner of revenue may require brokers every person doing business as a broker to furnish him with the ~~names of~~

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customers name and address of each customer for whom they have transacted business, and with such details regarding gross proceeds and other information as to transactions of any customer as will enable him to determine whether all income tax due on profits or gains of such customers has been paid. The provisions of section 6045 of the Internal Revenue Code of 1954, as amended through December 31, 1982, which define terms and provide the requirements that a statement be furnished to the customer shall apply.

Sec. 22. Minnesota Statutes 1982, section 290.41, subdivision 8, is amended to read:

Subd. 8. **FAILURE TO FILE RETURN.** In the case of each failure to file, with the commissioner, a return required by this section on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, the payer person failing to file such return shall pay to the commissioner a penalty of \$10 \$50 for each such failure, but the total amount imposed on the delinquent payer person for all such failures during any calendar year shall not exceed \$1,000 \$25,000. If one or more failures to file a return are due to intentional disregard of the filing requirement, then with respect to the failures the penalty imposed under the preceding sentence shall not be less than an amount equal to

(a) in the case of a return not described in clause (b) or (c), ten percent of the aggregate amount of the items required to be reported,

(b) in the case of a return required to be filed under subdivision 3, five percent of the gross proceeds required to be reported,

(c) in the case of a return required to be filed under subdivision 9 relating to direct sales, \$100 for each failure; however, the total amount imposed on the delinquent person for all intentional failures during any calendar year shall not exceed \$50,000. The penalty shall be collected in the same manner as any delinquent income tax.

Sec. 23. Minnesota Statutes 1982, section 290.41, is amended by adding a subdivision to read:

Subd. 9. **PAYMENTS OF REMUNERATION FOR SERVICES AND DIRECT SALES.** Every person who is required to make a return under section 6041A (relating to information returns regarding payments of remuneration for services and direct sales) of the Internal Revenue Code of 1954, as amended through December 31, 1982, shall file with the commissioner a copy of the return containing the information required under that section, and the provisions of that section shall govern the requirements of a statement that must be furnished to persons with respect to whom information is required to be furnished, notwithstanding section 290.42, clause (7).

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Sec. 24. Minnesota Statutes 1982, section 290.45, subdivision 1, is amended to read:

Subdivision 1. **DATE DUE, INSTALLMENTS.** The tax imposed by this chapter shall be paid to the commissioner of revenue at the time fixed for filing the return on which the tax is based, except that at the election of ~~the following taxpayers estates and trusts~~ the balance of tax due after applying any tax credit and payment of estimated tax may be paid in two equal installments, as follows:

(a) ~~as to estates and trusts,~~ The first shall be paid at the time fixed for filing the return, and the second on or before six months thereafter.

(b) ~~as to corporations, the first shall be paid at the time fixed for filing the return and the second on or before three months thereafter.~~ If any installment is not paid on or before the date fixed for its payment the whole amount of the tax unpaid shall become due and payable. They shall be paid to the commissioner or to the local officers designated by the commissioner with whom the return is filed as hereinbefore provided.

Sec. 25. Minnesota Statutes 1982, section 290.48, is amended by adding a subdivision to read:

Subd. 10. PRESUMPTIONS WHERE OWNER OF LARGE AMOUNT OF CASH IS NOT IDENTIFIED. (a) If the individual who is in physical possession of cash in excess of \$10,000 does not claim such cash as his, or as belonging to another person whose identity the commissioner can readily ascertain and who acknowledges ownership of such cash, then, for purposes of subdivisions 3 and 4, it shall be presumed that the cash represents gross income of a single individual for the taxable year in which the possession occurs, and that the collection of tax will be jeopardized by delay.

(b) In the case of any assessment resulting from the application of clause (a), the entire amount of the cash shall be treated as taxable income for the taxable year in which the possession occurs, such income shall be treated as taxable at an eight percent rate, and except as provided in clause (c), the possessor of the cash shall be treated (solely with respect to the cash) as the taxpayer for purposes of this chapter and the assessment and collection of the tax.

(c) If, after an assessment resulting from the application of clause (a), the assessment is abated and replaced by an assessment against the owner of the cash, the later assessment shall be treated for purposes of all laws relating to lien, levy, and collection as relating back to the date of the original assessment.

(d) For purposes of this subdivision, the definitions contained in section 6867 of the Internal Revenue Code of 1954, as amended through December 31, 1982, shall apply.

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Sec. 26. [290.522] ACTION TO ENJOIN PROMOTERS OF ABUSIVE TAX SHELTERS.

A civil action in the name of the state of Minnesota to enjoin any person from further engaging in conduct subject to penalty under section 28 (relating to penalty for promoting abusive tax shelter), may be commenced at the request of the commissioner. Any action under this section shall be brought by the attorney general in the tax court or the district court for the judicial district in which such person resides, has his principal place of business, or has engaged in conduct subject to penalty under section 28, or in the district court for Ramsey county. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the state of Minnesota against the person.

If the court finds that the person has engaged in any conduct subject to penalty under section 28 (relating to penalty for promoting abusive tax shelters), and that injunctive relief is appropriate to prevent recurrence of the conduct, the court may enjoin the person from engaging in the conduct or in any other activity subject to penalty under section 28.

Sec. 27. Minnesota Statutes 1982, section 290.53, subdivision 2, is amended to read:

Subd. 2. FAILURE TO MAKE AND FILE RETURN. In case of any failure to make and file a return as required by this chapter within the time prescribed by law or prescribed by the commissioner in pursuance of law, there shall be added to the tax in lieu of the penalty provided in subdivision 1: ten percent if the failure is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

In the case of a failure to file a return of tax imposed by this chapter within 60 days of the date prescribed for filing of the return (determined with regard to any extensions of time for filing), the amount added to the tax under this subdivision shall not be less than the lesser of \$50 or 100 percent of the amount required to be shown as tax on the return.

The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax, and the amount of said tax together with the amount so added shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid until paid unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax.

For the purposes of this subdivision the amount of any taxes required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

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Sec. 28. Minnesota Statutes 1982, section 290.53, is amended by adding a subdivision to read:

Subd. 9. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS. Any person who (a)(1) organizes (or assists in the organization of) a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, or

(2) participates in the sale of any interest in an entity or plan or arrangement referred to in clause (1), and

(b) makes or furnishes (in connection with the organization or sale) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter,

shall pay a penalty equal to the greater of \$1,000 or ten percent of the gross income derived or to be derived by the person from the activity.

The penalty imposed by this subdivision is in addition to any other penalty provided by this section. The penalty shall be collected in the same manner as any delinquent income tax. In any proceeding involving the issue of whether or not any person is liable for this penalty, the burden of proof shall be upon the commissioner.

Sec. 29. Minnesota Statutes 1982, section 290.53, is amended by adding a subdivision to read:

Subd. 10. FRIVOLOUS INCOME TAX RETURN; PENALTY. If any individual files what purports to be an income tax return required by this chapter, but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment is substantially incorrect; and the conduct is due to a position which is frivolous, or a desire (which appears on the purported return) to delay or impede the administration of Minnesota income tax laws, then the individual shall pay a penalty of \$500. The penalty imposed by this subdivision shall be in addition to any other penalty provided by this section. The penalty shall be collected in the same manner as any delinquent income tax. In any proceeding involving the issue of whether or not any person is liable for this penalty, the burden of proof shall be upon the commissioner.

Sec. 30. Minnesota Statutes 1982, section 290.92, subdivision 7, is amended to read:

Subd. 7. WITHHOLDING STATEMENT TO EMPLOYEE OR PAYEE AND TO COMMISSIONER. (1) Every person required to deduct and withhold from an employee a tax under subdivision 2a or subdivision 3, or who

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would have been required to deduct and withhold a tax under subdivision 2a or subdivision 3, determined without regard to subdivision 19, if the employee had claimed no more than one withholding exemption, or who paid wages not subject to withholding under subdivision 2a or 3 to an employee in excess of \$600, or who has entered into a voluntary withholding agreement with a payee pursuant to subdivision 20, shall furnish to each such employee in respect to the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, at the employee's request within 30 days after the last payment of remuneration is made within 30 days after the date of receipt of a written request from the employee if the 30-day period ends before January 31, a written statement showing the following:

(a) Name of such person,

(b) The name of the employee or payee and his social security account number,

(c) The total amount of wages as that term is defined in subdivision 1(1), and/or the total amount of remuneration subject to withholding pursuant to subdivision 20, and the amount of sick pay as required under section 6051(f) of the Internal Revenue Code of 1954, as amended through December 31, 1980,

(d) The total amount deducted and withheld as tax under subdivision 2a or subdivision 3.

(2) The statement required to be furnished by this subdivision in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the commissioner may prescribe.

(3) The commissioner may prescribe ~~regulations~~ rules providing for reasonable extensions of time, not in excess of 30 days, to employers or payers required to furnish such statements to their employees or payees under this subdivision.

(4) A duplicate of any statement made pursuant to this subdivision and in accordance with rules prescribed by the commissioner, along with a reconciliation in such form as the commissioner may prescribe of all such statements for the calendar year (including a reconciliation of the quarterly returns required to be filed pursuant to subdivision 6), shall be filed with the commissioner on or before February 28 of the year after the payments were made.

Sec. 31. Minnesota Statutes 1982, section 290.92, subdivision 13, is amended to read:

Subd. 13. **REFUNDS.** (1) Where the amount of the tax withheld at the source under subdivision 2a or subdivision 3 exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the employee taxpayer or imposed upon him by this chapter, the amount of such excess shall be

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refunded to the employee taxpayer. If the amount of such excess is less than \$1 the commissioner shall not be required to refund that amount. Where any amount of such excess to be refunded exceeds \$10, such amount on the original return shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the employee taxpayer or (b) the date on which his return is filed, whichever is later, to the date the refund is paid to the taxpayer. A return shall not be treated as filed until it is in processible form. A return is in processible form when it is filed on a permitted form containing the taxpayer's name, address, social security account number, the required signature, and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the employee taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest, to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

Sec. 32. Minnesota Statutes 1982, section 290.92, subdivision 15, is amended to read:

Subd. 15. **PENALTIES.** (1) ~~If any tax required to be deducted and withheld under subdivision 2a or subdivision 3, or any portion thereof, is not paid to or deposited with the commissioner within the time specified in subdivision 6 for the payment thereof, there shall be added thereto a penalty equal to ten percent of the amount so remaining unpaid. Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty, shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid or deposited until paid. Where an extension of time for payment has been granted under the provisions of subdivision 6, interest shall be paid at the rate specified in section 270.75 from the date when such payment or deposit should have been made if no extension had been granted, until such tax is paid. If payment is not made at the expiration of the extended period the penalties provided in this subdivision shall apply.~~

(2) In the case of any failure to withhold a tax on wages, make and file quarterly returns or make payments to or deposits with the commissioner of amounts withheld, as required by this section, within the time prescribed by law, there shall be added to the tax in lieu of the penalty provided in paragraph (1) a penalty equal to ten percent of the amount of tax that should have been properly

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withheld and paid over to or deposited with the commissioner if the failure is for not more than 30 days with an additional five percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. The amount of the tax together with this amount shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid until paid. The amount so added to the tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

(3) (2) If any employer required to withhold a tax on wages, make deposits, make and file quarterly returns and make payments to the commissioner of amounts withheld, as required by sections 290.92 to 290.97, willfully fails to withhold such a tax or make such deposits, files a false or fraudulent return, willfully fails to make such a payment or deposit, or willfully attempts in any manner to evade or defeat any such tax or the payment or deposit thereof, there shall also be imposed on such employer as a penalty an amount equal to 50 percent of the amount of tax (less any amount paid or deposited by such employer on the basis of such false or fraudulent return or deposit) that should have been properly withheld and paid over or deposited with the commissioner. The amount of the tax together with this amount shall bear interest at the rate specified in section 270.75 from the time the tax should have been paid until paid. The penalty imposed by this paragraph shall be collected as a part of the tax, and shall be in addition to any other penalties civil and criminal, prescribed by this subdivision.

(4) (3) If any person required under the provisions of subdivision 7 to furnish a statement to an employee or payee and a duplicate statement to the commissioner, or to furnish a reconciliation of such statements (and quarterly returns) to the commissioner, willfully furnishes a false or fraudulent statement to an employee or payee or a false or fraudulent duplicate statement or reconciliation of statements (and quarterly returns) to the commissioner, or willfully fails to furnish a statement or such reconciliation in the manner, at the time, and showing the information required by the provisions of subdivision 7, or ~~regulations~~ rules prescribed by the commissioner thereunder, there shall be imposed on such a person a penalty of ~~\$10~~ \$50 for each such act or failure to act, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000. The penalty imposed by this paragraph shall become due and payable within ten days after the mailing of a written demand therefor, and may be collected in the manner prescribed in subdivision 6(8).

(5) (4) In addition to the penalties hereinbefore prescribed, any person required to withhold a tax on wages, make and file quarterly returns and make payments or deposits to the commissioner of amounts withheld, as required by this section, who willfully fails to withhold such a tax or truthfully make and file

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such a quarterly return or make such a payment or deposit, shall be guilty of a gross misdemeanor.

~~(6)~~ (5) In lieu of any other penalty provided by law, except the penalty provided by paragraph (4) (3), any person required under the provisions of subdivision 7 to furnish a statement of wages to an employee and a duplicate statement to the commissioner, who willfully furnishes a false or fraudulent statement of wages to an employee or a false or fraudulent duplicate statement of wages to the commissioner, or who willfully fails to furnish such a statement in the manner, at the time, and showing the information required by the provisions of subdivision 7, or ~~regulations~~ rules prescribed by the commissioner thereunder, shall be guilty of a gross misdemeanor.

~~(7)~~ (6) Any employee required to supply information to his employer under the provisions of subdivision 5, who willfully fails to supply information thereunder which would require an increase in the tax to be deducted and withheld under subdivision 2a or subdivision 3, shall be guilty of a misdemeanor.

~~(8)~~ (7) The term "person," as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

~~(9)~~ (8) All payments received may, in the discretion of the commissioner of revenue, be credited first to the oldest liability not secured by a judgment or lien, but in all cases shall be credited first to penalties, next to interest, and then to the tax due.

~~(10)~~ (9) In addition to any other penalty provided by law, any employee who furnishes a withholding exemption certificate to his employer which the employee has reason to know contains a materially incorrect statement shall be liable to the commissioner of revenue for a penalty of \$500 for each instance. The penalty shall be immediately due and payable and may be collected in the same manner as any delinquent income tax.

~~(11)~~ (10) In addition to any other penalty provided by law, any employer who fails to submit a copy of a withholding exemption certificate required by ~~section 26 subdivision 5a~~, clause (1)(a), (1)(b), or (2) shall be liable to the commissioner of revenue for a penalty of \$50 for each instance. The penalty shall be immediately due and payable and may be collected in the manner provided in subdivision 6(8).

Sec. 33. Minnesota Statutes 1982, section 290.92, is amended by adding a subdivision to read:

Subd. 26. EXTENSION OF WITHHOLDING TO CERTAIN PAYMENTS WHERE IDENTIFYING NUMBER NOT FURNISHED OR INACCURATE. (a) If, in the case of any backup withholding payment, (1) the payee

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fails to furnish his social security account number to the payor, or (2) the commissioner notifies the payor that the number furnished by the payee is incorrect, then the payor shall deduct and withhold from the payment a tax equal to five percent of the payment.

(b) (1) In the case of any failure described in clause (a) (1), clause (a) shall apply to any backup withholding payment made during the period during which the social security account number has not been furnished.

(2) In any case where there is a notification described in clause (a)(2), clause (a) shall apply to any backup withholding payment made (i) after the close of the 15th day after the day on which the payor was so notified, and (ii) before the payee furnishes another social security account number.

(3) Unless the payor otherwise elects, clause (a) shall also apply to any backup withholding payment made after the close of the period described in paragraph (1) or (2) (as the case may be).

If the payor so elects, clause (a) shall also apply to any backup withholding payment made during the 15-day period described in paragraph (2).

(c) The provisions of section 3402(s) of the Internal Revenue Code of 1954, as amended through December 31, 1982, shall apply and shall govern when withholding shall be required and the definition of terms. The term "backup withholding payment" shall include only those payments for personal services. No tax shall be deducted or withheld under this subdivision with respect to any amount for which withholding is otherwise required under this section. For purposes of this section, payments which are subject to withholding under this subdivision shall be treated as if they were wages paid by an employer to an employee.

(d) Whenever the commissioner notifies a payor under this subdivision that the social security account number furnished by any payee is incorrect, notwithstanding section 290.61, the commissioner shall at the same time furnish a copy of the notice to the payor, and the payor shall promptly furnish the copy to the payee. If the commissioner notifies a payor under this subdivision that the social security account number furnished by any payee is incorrect and the payee subsequently furnishes another social security account number to the payor, the payor shall promptly notify the commissioner of the other social security account number furnished.

Sec. 34. Minnesota Statutes 1982, section 290.93, subdivision 9, is amended to read:

Subd. 9. **OVERPAYMENT OF ESTIMATED TAX.** (1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the overpayment shall be credited against the unpaid installments, if any. Where the total amount

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of the estimated tax payments plus (a) the total amount of tax withheld at the source under section 290.92, subdivision 2a or subdivision 3 (if any) and (b) and other payments (if any) exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by this chapter, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than \$1 the commissioner shall not be required to refund that amount. Where any amount of such excess to be refunded exceeds \$10, such amount on the original return shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the taxpayer or (b) the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. A return shall not be treated as filed until it is in processible form. A return is in processible form when the return is filed on a permitted form, and the return contains the taxpayer's name, address, social security account number, the required signature, and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the taxpayer within the purview of section 290.46.

(3) The commissioner of finance shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

Sec. 35. Minnesota Statutes 1982, section 290.93, subdivision 10, is amended to read:

Subd. 10. **UNDERPAYMENT OF ESTIMATED TAX.** (1) In the case of any underpayment of estimated tax by an individual, except as provided in paragraph (4) or (5), there may be added to and become a part of the taxes imposed by this chapter, for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of the underpayment for the period of the underpayment.

(2) For purposes of the preceding paragraph, the amount of underpayment shall be the excess of

(a) The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent (66 2/3 percent in the case of farmers referred to in subdivision 5(2) of this section) of the taxes shown on the return for the taxable year or the taxes for such year if no return was filed, over

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(b) The amount, if any, of the installment paid on or before the last day prescribed for such payment.

(3) The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier

(a) The 15th day of the fourth month following the close of the taxable year.

(b) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subparagraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under paragraph (2) (a) for such installment date.

(4) The addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser

(a) The total tax liability shown on the return of the individual for the preceding taxable year (if a return showing a liability for such taxes was filed by the individual for the preceding taxable year of 12 months), or

(b) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to the personal credits for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to the preceding taxable year, or

(c) An amount equal to 80 percent (66 $\frac{2}{3}$ percent in the case of farmers referred to in subdivision 5(2) of this section) of the tax for the taxable year (after deducting personal credits) computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the taxable income shall be placed on an annualized basis by

(i) Multiplying by 12 (or in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income computed for the months in the taxable year ending before the month in which the installment is required to be paid.

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, or

(d) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the

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months in the taxable year ending before the month in which the installment is required to be paid.

(5) No addition to the tax shall be imposed under this subdivision for any taxable year if:

(a) the individual did not have any liability for tax for the preceding taxable year,

(b) the preceding taxable year was a taxable year of 12 months, and

(c) the individual was a resident of Minnesota throughout the preceding taxable year.

~~(5)~~ (6) For the purposes of applying this subdivision, the estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under section 290.92, subdivision 12 (relating to tax withheld at source on wages), and the refundable credits contained in sections 290.06, subdivision 13, 290.067, and 290.501, and ~~chapter 290A~~ which are allowed against income tax liability, and the amount of such credits for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amounts shall be deemed paid on each installment date (determined under subdivisions 6 and 7 of this section) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

Sec. 36. Minnesota Statutes 1982, section 290.93, subdivision 11, is amended to read:

Subd. 11. **FAILURE TO PAY.** Any individual required under this section to pay any estimated tax, who willfully fails to pay such estimated tax at the time or times required by law or ~~regulations~~ rules, shall, in addition to other penalties provided by law, be guilty of a gross misdemeanor. This subdivision shall not apply to an individual with respect to the failure to pay estimated tax if there is no addition to the tax under this section with respect to the failure to pay estimated tax.

Sec. 37. Minnesota Statutes 1982, section 290.934, subdivision 4, is amended to read:

Subd. 4. **EXCEPTION.** (a) Notwithstanding the provisions of the preceding subdivisions, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser

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(1) The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of 12 months.

(2) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

(3) (A) An amount equal to the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) for the first two months of the taxable year, in the case of the installment required to be paid in the third month,

(ii) for the first two months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

(iii) for the first six months or for the first eight months of the taxable year in the case of the installment required to be paid in the ninth month, and

(iv) for the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this paragraph, the taxable income shall be placed on an annualized basis by

(i) multiplying by 12 the taxable income referred to in subparagraph (A), and

(ii) dividing the resulting amount by the number of months in the taxable year (2, 5, 6, 8, 9, or 11, as the case may be) referred to in clause (A).

(4) (A) If this paragraph is applicable, the amount determined for any installment shall be determined in the following manner:

(i) take the taxable income for all months during the taxable year preceding the filing month,

(ii) divide that amount by the base period percentage for all months during the taxable year preceding the filing month,

(iii) determine the tax on the amount determined under item (ii), and

(iv) multiply the tax computed under item (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(B) For purposes of this paragraph:

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(i) The "base period percentage" for any period of months shall be the average percent which the taxable income for the corresponding months in each of the three preceding taxable years bears to the taxable income for the three preceding taxable years.

(ii) The term "filing month" means the month in which the installment is required to be paid.

(iii) This paragraph shall only apply if the base period percentage for any six consecutive months of the taxable year equals or exceeds 70 percent.

(iv) The commissioner may by rules provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(b) Notwithstanding clause (a) (1) and (2), in the case of a large corporation, the addition to the tax with respect to any underpayment of any installment shall be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment is less than the amount required to be paid on or before the date. The amount required to be paid as estimated tax for the taxable year shall in no event be less than the applicable percentage of (A) the tax shown on the return for the taxable year, or (B) if no return was filed, the tax for the year. The term "large corporation" means any corporation (or any predecessor corporation) which had taxable net income of \$1,000,000 or more for any taxable year during the testing period. The term "testing period" means the three taxable years immediately preceding the taxable year involved. The term "applicable percentage" means 65 percent for taxable years beginning after April 30, 1982, 75 percent for taxable years beginning after December 31, 1982, and 80 90 percent for taxable years beginning after December 31, 1983.

Sec. 38. Minnesota Statutes 1982, section 290.9725, is amended to read:

290.9725 ELECTION BY SMALL BUSINESS CORPORATION.

Any corporation having a valid election in effect under section ~~4372~~ 1362 of the Internal Revenue Code of 1954, as amended through December 31, ~~1981~~ 1982, shall not be subject to the taxes imposed by this chapter, except the tax imposed under section 290.92.

Sec. 39. Minnesota Statutes 1982, section 290.9726, subdivision 5, is amended to read:

Subd. 5. **CREDIT ALLOWANCES.** The credits provided in sections 290.06 and 290.501 to which the corporation is entitled shall be allocated to the shareholders in the same percentage as the undistributed income was apportioned under section ~~4373(b)~~ as provided in sections 1366 and 1377 of the Internal Revenue Code of 1954, as amended through December 31, ~~1981~~ 1982. The

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limitations set forth in the computation of the credit shall be applied to the shareholders.

Sec. 40. Minnesota Statutes 1982, section 290.9726, subdivision 6, is amended to read:

Subd. 6. **BASIS.** The adjustments to basis described in section 1376 of the Internal Revenue Code of 1954, as amended through ~~December 31, 1981~~ as it existed prior to October 19, 1982, shall not be made for any year beginning before January 1, 1981 for which the corporation did not have a valid election to be taxed as a small business corporation.

Sec. 41. Minnesota Statutes 1982, section 290.974, is amended to read:

290.974 RETURN OF ELECTING SMALL BUSINESS S CORPORATION.

Every ~~electing small business S~~ corporation under section 290.9725 shall make a ~~small business corporation~~ return for each taxable year during which said election is in effect stating specifically the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, each shareholder's pro rata share of each item of the corporation for the taxable year, and such other information for the purposes of carrying out the provisions of sections 290.01, subdivisions 20 to 20f and 290.9725 as the commissioner may by forms and ~~regulations~~ rules prescribe.

Sec. 42. Minnesota Statutes 1982, section 290A.03, subdivision 3, is amended to read:

Subd. 3. **INCOME.** (1) "Income" means the sum of the following:

(a) federal adjusted gross income as defined in the Internal Revenue Code of 1954 as amended through ~~December 31, 1981~~ January 15, 1983; and

(b) the sum of the following amounts to the extent not included in clause (a):

(i) additions to federal adjusted gross income as provided in Minnesota Statutes, section 290.01, subdivision 20a, clauses (1), (3), (9), (14), (15), and (21);

(ii) all nontaxable income;

(iii) recognized net long term capital gains;

(iv) dividends and interest excluded from federal adjusted gross income under sections 116 or 128 of the Internal Revenue Code of 1954;

(v) cash public assistance and relief;

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(vi) any pension or annuity (including railroad retirement benefits, all payments received under the federal social security act, supplemental security income, and veterans benefits), which was not exclusively funded by the claimant or spouse, or which was funded exclusively by the claimant or spouse and which funding payments were excluded from federal adjusted gross income in the years when the payments were made;

(vii) nontaxable interest received from the state or federal government or any instrumentality or political subdivision thereof;

(viii) workers' compensation;

(ix) unemployment benefits;

(x) nontaxable strike benefits; and

(xi) the gross amounts of payments received in the nature of disability income or sick pay as a result of accident, sickness, or other disability, whether funded through insurance or otherwise. In the case of an individual who files an income tax return on a fiscal year basis, the term "federal adjusted gross income" shall mean federal adjusted gross income reflected in the fiscal year ending in the calendar year. Federal adjusted gross income shall not be reduced by the amount of a net operating loss carryback.

(2) "Income" does not include

(a) amounts excluded pursuant to the Internal Revenue Code, sections 101(a), 102, 117, and 121;

(b) amounts of any pension or annuity which was exclusively funded by the claimant or spouse and which funding payments were not excluded from federal adjusted gross income in the years when the payments were made;

(c) surplus food or other relief in kind supplied by a governmental agency;

(d) relief granted under sections 290A.01 to 290A.20;

(e) child support payments received under a temporary or final decree of dissolution or legal separation;

(f) federal adjusted gross income shall be reduced by wage or salary expense, or expense of work incentive programs which are not allowed as a deduction under provisions of section 280C of the Internal Revenue Code of 1954; or

(g) federal adjusted gross income shall be reduced by the amount of the penalty on the early withdrawal of an all-savers certificate as provided in section 128(e) of the Internal Revenue Code of 1954.

Sec. 43. INSTRUCTIONS TO THE REVISOR.

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In the next edition of Minnesota Statutes, the revisor of statutes shall substitute the phrase "Internal Revenue Code of 1954, as amended through December 31, 1982" for the words "Internal Revenue Code of 1954, as amended through December 31, 1981" or for the words "Internal Revenue Code of 1954, as amended through December 1, 1982" wherever the phrase occurs in chapter 290, except section 290.01, subdivision 20.

Sec. 44. REPEALER.

Minnesota Statutes 1982, section 290.01, subdivision 28, is repealed.

Sec. 45. EFFECTIVE DATE.

Sections 2 and 6 are effective for taxable years beginning after December 31, 1982, except as otherwise provided. Sections 4, 5, 8, 9, 12, 18, 24, 27, 37, 39, 41, 43, and 44 are effective for taxable years beginning after December 31, 1982. Section 3 is effective for taxable years beginning after December 31, 1982 except that the provision concerning qualified voluntary employee contributions is effective for taxable years beginning after December 31, 1981. Sections 7 and 19 are effective for taxable years beginning after December 31, 1981. Sections 1, 10, 14, 21, 25, 26, 28, 30, 36, and 40 are effective the day after final enactment. Section 11 is effective for taxable years beginning after December 31, 1982, except that the reference to the straight line method and other methods and the adoption of changes made in Public Law Number 97-448 and the changes made in clauses (a) and (e) are effective for property placed in service after December 31, 1980, in taxable years ending after that date. Section 13 is effective for taxable years beginning after December 31, 1982, provided that the adoption of section 204(b) of Public Law Number 97-248 is effective at the same time it is effective for federal purposes. Sections 15, 16, and 17 are effective at the same time the changes made in Public Law Number 97-248 and Public Law Number 97-448 are effective for federal income tax purposes. Sections 20, 22, and 32 are effective for returns or statements for which the due date is after December 31, 1983. Section 23 is effective for payments and sales made after December 31, 1982. Sections 29, 31, and 34 are effective for documents filed after June 30, 1983. Section 33 is effective for payments made after December 31, 1983. Section 35 is effective for taxable years beginning after December 31, 1982, except that the amendment in clause (6) is effective for taxable years beginning after December 31, 1981. Section 38 is effective for taxable years beginning after December 31, 1982, however as provided in section 6(b)(3) of Public Law Number 97-354, the new passive income rules of that law shall apply to a taxable year beginning in 1982. Section 42 is effective for claims based on rent paid in 1982 and subsequent years and property taxes payable in 1983 and subsequent years.

Approved May 20, 1983

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