In no case shall lands be disposed of without there being reserved to the county all iron ore and other valuable minerals in and upon the lands, with right to explore for, mine and remove the iron ore and other valuable minerals, nor shall the minerals and mineral rights be disposed of, either before or after disposition of the surface rights, otherwise than by mining lease, in similar general form to that provided by section 93.20 for mining leases affecting state lands. The lease shall be for a term not exceeding 50 years, and be issued on a royalty basis, the royalty to be not less than 25 cents per ton of 2,240 pounds, and fix a minimum amount of royalty payable during each year, whether mineral is removed or not. Prospecting options for mining leases may be granted for periods not exceeding one year. The options shall require, among other things, periodical showings to the county board of the results of exploration work done.

(5) Make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers.

Presented to the governor April 5, 1989

Signed by the governor April 6, 1989, 8:40 a.m.

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## CHAPTER 27—H.F.No. 68

*An act relating to taxation; making technical corrections to the property taxation of unmined iron ore; making technical corrections and clarifications to the corporate franchise tax; retroactively providing a corporate franchise tax modification for mining income or gains; clarifying the computation of mining occupation taxes; exempting S corporations from business activity report filing requirements; repealing an obsolete reference; amending Minnesota Statutes 1988, sections 273.1104, subdivision 2; 290.01, subdivision 19d; 290.015, subdivisions 2, 3, and 4; 290.092, subdivisions 2 and 4a; 290.191, subdivisions 6 and 11; 290.371; 298.01, subdivisions 3, 4, and by adding subdivisions; and Laws 1988, chapter 719, article 2, section 57; repealing Minnesota Statutes 1988, section 52.22.*

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

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### ARTICLE 1

Section 1. Minnesota Statutes 1988, section 273.1104, subdivision 2, is amended to read:

Subd. 2. On or before ~~October 1~~ September 15 in each year, the commissioner shall send to each person subject to the tax on unmined iron ores and to each taxing district affected, a notice of the ~~gross tax capacity~~ market value of the unmined ores as determined by the commissioner prior to adjustment under subdivision 1. Said notice shall be sent by mail directed to such person at the

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address given in the report filed and the assessor of such taxing district, but the validity of the tax shall not be affected by the failure of the commissioner of revenue to mail such notice or the failure of the person subject to the tax to receive it.

On the first secular day following the ~~tenth~~ first day of October, the commissioner of revenue shall hold a hearing which may be adjourned from day to day. All relevant and material evidence having probative value with respect to the issues shall be submitted at the hearing and such hearing shall not be a "contested case" within the meaning of section 14.02, subdivision 3. Every person subject to such tax may at such hearing present evidence and argument on any matter bearing upon the validity or correctness of the tax determined to be due, and the commissioner of revenue shall review the determination of such tax.

Sec. 2. Minnesota Statutes 1988, section 290.01, subdivision 19d, is amended to read:

Subd. 19d. **CORPORATIONS; MODIFICATIONS DECREASING FEDERAL TAXABLE INCOME.** For corporations, there shall be subtracted from federal taxable income after the increases provided in subdivision 19c:

(1) the amount of foreign dividend gross-up added to gross income for federal income tax purposes under section 78 of the Internal Revenue Code;

(2) the decrease in salary expense for federal income tax purposes due to claiming the federal jobs credit under section 51 of the Internal Revenue Code;

(3) any dividend (not including any distribution in liquidation) paid within the taxable year by a national or state bank to the United States, or to any instrumentality of the United States exempt from federal income taxes, on the preferred stock of the bank owned by the United States or the instrumentality;

(4) amounts disallowed for intangible drilling costs due to differences between this chapter and the Internal Revenue Code in taxable years beginning before January 1, 1987, as follows:

(i) to the extent the disallowed costs are represented by physical property, an amount equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09, subdivision 7, subject to the modifications contained in subdivision 19e; and

(ii) to the extent the disallowed costs are not represented by physical property, an amount equal to the allowance for cost depletion under Minnesota Statutes 1986, section 290.09, subdivision 8;

(5) the deduction for capital losses pursuant to sections 1211 and 1212 of the Internal Revenue Code of 1986, as amended through December 31, 1987, except that:

(i) for capital losses incurred in taxable years beginning after December 31, 1986, capital loss carrybacks shall not be allowed;

(ii) for capital losses incurred in taxable years beginning after December 31, 1986, a capital loss carryover to each of the 15 taxable years succeeding the loss year shall be allowed;

(iii) for capital losses incurred in taxable years beginning before January 1, 1987, a capital loss carryback to each of the three taxable years preceding the loss year, subject to the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed; and

(iv) for capital losses incurred in taxable years beginning before January 1, 1987, a capital loss carryover to each of the five taxable years succeeding the loss year to the extent such loss was not used in a prior taxable year and subject to the provisions of Minnesota Statutes 1986, section 290.16, shall be allowed;

(6) an amount for interest and expenses relating to income not taxable for federal income tax purposes, if (i) the income is taxable under this chapter and (ii) the interest and expenses were disallowed as deductions under the provisions of section 171(a)(2), 265 or 291 of the Internal Revenue Code of 1986, as amended through December 31, 1987, in computing federal taxable income;

(7) in the case of mines, oil and gas wells, other natural deposits, and timber for which percentage depletion was disallowed pursuant to subdivision 19c, clause (11), a reasonable allowance for depletion based on actual cost. In the case of leases the deduction must be apportioned between the lessor and lessee in accordance with rules prescribed by the commissioner. In the case of property held in trust, the allowable deduction must be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the trust, or if there is no provision in the instrument, on the basis of the trust's income allocable to each;

(8) for certified pollution control facilities placed in service in a taxable year beginning before December 31, 1986, and for which amortization deductions were elected under section 169 of the Internal Revenue Code of 1954, as amended through December 31, 1985, an amount equal to the allowance for depreciation under Minnesota Statutes 1986, section 290.09, subdivision 7;

(9) the amount included in federal taxable income attributable to the credits provided in Minnesota Statutes 1986, section 273.1314, subdivision 9, or Minnesota Statutes, section 469.171, subdivision 6;

(10) amounts included in federal taxable income that are due to refunds of income, excise, or franchise taxes based on net income or related minimum taxes paid by the corporation to Minnesota, another state, a political subdivision of another state, the District of Columbia, or a foreign country or possession of the United States to the extent that the taxes were added to federal taxable income under section 290.01, subdivision 19c, clause (1), in a prior taxable year; ~~and~~

(11) the following percentage of royalties, fees, or other like income accrued

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or received from a foreign operating corporation or a foreign corporation which is part of the same unitary business as the receiving corporation:

| Taxable Year Beginning After | Percentage |
|---|---|
| December 31, 1988 | 50 percent |
| December 31, 1990 | 80 percent~~.~~; and |

(12) income or gains from the business of mining as defined in section 290.05, subdivision 1, clause (a), that are not subject to Minnesota franchise tax.

Sec. 3. Minnesota Statutes 1988, section 298.01, subdivision 3, is amended to read:

Subd. 3. **OCCUPATION TAX; OTHER ORES.** Every person engaged in the business of mining or producing ores in this state, except iron ore or taconite concentrates, shall pay an occupation tax to the state of Minnesota as provided in this subdivision. The tax is ~~measured by the person's taxable income for the year for which the tax is imposed, and computed in the manner and at the rates provided in chapter 290~~ determined in the same manner as the tax imposed by section 290.02, except that sections ~~290.01, subdivisions 19c, clause (11), 19d, clause (7), and~~ 290.05, subdivision 1, clause (a), and 290.17, subdivision 4, do not apply. ~~Corporations and individuals shall be subject to the alternative minimum taxes imposed under chapter 290.~~ The tax is in addition to all other taxes and is due and payable on or before June 15 of the year succeeding the calendar year covered by the report required by section 298.05.

Sec. 4. Minnesota Statutes 1988, section 298.01, is amended by adding a subdivision to read:

Subd. 3a. **GROSS INCOME.** (a) For purposes of determining a person's taxable income under subdivision 3, gross income is determined by the amount of gross proceeds from mining in this state under section 298.016 and includes any gain or loss recognized from the sale or disposition of assets used in the business in this state.

(b) In applying section 290.191, subdivision 5, transfers of ores are deemed to be sales outside this state if the ores are transported out of this state after the ores have been converted to a marketable quality.

Sec. 5. Minnesota Statutes 1988, section 298.01, is amended by adding a subdivision to read:

Subd. 3b. **DEDUCTIONS.** (a) For purposes of determining taxable income under subdivision 3, the deductions from gross income include only those expenses necessary to convert raw ores to marketable quality. Such expenses include costs associated with refinement but do not include expenses such as transportation, stockpiling, marketing, or marine insurance that are incurred after marketable ores are produced, unless the expenses are included in gross income.

(b) The provisions of section 290.01, subdivisions 19c, clauses (7) and (11), and 19d, clauses (7) and (12), are not used to determine taxable income.

Sec. 6. Minnesota Statutes 1988, section 298.01, subdivision 4, is amended to read:

Subd. 4. **OCCUPATION TAX; IRON ORE; TACONITE CONCENTRATES.** A person engaged in the business of mining or producing of iron ore or taconite concentrates in this state shall pay an occupation tax to the state of Minnesota. The tax is ~~measured by the person's taxable income for the year for which the tax is imposed, and computed in the manner and at the rates provided for in chapter 290,~~ determined in the same manner as the tax imposed by section 290.02, except that sections ~~290.01, subdivisions 19c, clause (11), 19d, clause (7), and~~ 290.05, subdivision 1, clause (a), and 290.17, subdivision 4, do not apply. ~~Corporations and individuals shall be subject to the alternative minimum taxes imposed under chapter 290.~~ The tax is in addition to all other taxes and is due and payable on or before June 15 of the year succeeding the calendar year covered by the report required by section 298.05.

Sec. 7. Minnesota Statutes 1988, section 298.01, is amended by adding a subdivision to read:

Subd. 4a. **GROSS INCOME.** (a) For purposes of determining a person's taxable income under subdivision 4, gross income is determined by the mine value of the ore mined in Minnesota and includes any gain or loss recognized from the sale or disposition of assets used in the business in this state.

(b) Mine value is the value, or selling price, of iron ore or taconite concentrates, f.o.b. mine. The mine value is calculated by multiplying the iron unit price for the period, as determined by the commissioner, by the tons produced and the weighted average analysis.

(c) In applying section 290.191, subdivision 5, transfers of iron ore and taconite concentrates are deemed to be sales outside this state if the iron ore or taconite concentrates are transported out of this state after the raw iron ore and taconite concentrates have been converted to a marketable quality.

Sec. 8. Minnesota Statutes 1988, section 298.01, is amended by adding a subdivision to read:

Subd. 4b. **DEDUCTIONS.** For purposes of determining taxable income under subdivision 4, the deductions from gross income include only those expenses necessary to convert raw iron ore or taconite concentrates to marketable quality. Such expenses include costs associated with beneficiation and refinement but do not include expenses such as transportation, stockpiling, marketing, or marine insurance that are incurred after marketable iron ore or taconite pellets are produced.

Sec. 9. Minnesota Statutes 1988, section 298.01, is amended by adding a subdivision to read:

**New language is indicated by underline, deletions by ~~strikeout~~.**

Subd. 4c. **SPECIAL DEDUCTIONS.** (a) For purposes of determining taxable income under subdivision 4, the following modifications are allowed:

(1) the provisions of section 290.01, subdivisions 19c, clauses (7) and (11), and 19d, clauses (7) and (12), are not used to determine taxable income; and

(2) for assets placed in service before January 1, 1990, the deduction for depreciation will be the same amount allowed under chapter 290, except that after an asset has been fully depreciated for federal income tax purposes any remaining depreciable basis is allowed as a deduction using the straight-line method over the following number of years:

(i) three-year property, one year;

(ii) five- and seven-year property, two years;

(iii) ten-year property, five years; and

(iv) all other property, seven years.

No deduction is allowed if an asset is fully depreciated for occupation tax purposes before January 1990.

(b) For purposes of determining the deduction allowed under paragraph (a), clause (2), the remaining depreciable basis of property placed in service before January 1, 1990, is calculated as follows:

(1) the adjusted basis of the property on December 31, 1989, which was used to calculate the hypothetical corporate franchise tax under Minnesota Statutes 1988, section 298.40, including salvage value; less

(2) deductions for depreciation allowed under section 290.01, subdivision 19e.

(c) The basis for determining gain or loss on sale or disposition of assets placed in service before January 1, 1990, is the basis determined under paragraph (b), less the deductions allowed under paragraph (a), clause (2).

(d) The amount of net operating loss incurred in a taxable year beginning before January 1, 1990, that may be carried over to a taxable year beginning after December 31, 1989, is the amount of net operating loss carryover determined in the calculation of the hypothetical corporate franchise tax under Minnesota Statutes 1988, sections 298.40 and 298.402.

Sec. 10. **EFFECTIVE DATES.**

Section 1 is effective for taxes levied in 1989, payable in 1990, and thereafter. Section 2 is effective for taxable years beginning after December 31, 1986. Sections 3 to 5 are effective for ores mined after December 31, 1986. Sections 6 to 9 are effective for ores mined after December 31, 1989.

**ARTICLE 2**

Section 1. Minnesota Statutes 1988, section 290.015, subdivision 2, is amended to read:

Subd. 2. **PRESUMPTION.** (a) A person is presumed, subject to rebuttal, to be obtaining or regularly soliciting business from within this state if:

(1) ~~it is a financial institution and~~ it conducts activities described in subdivision 1, paragraph (b), without regard to transactions described in subdivision 3, with 20 or more persons within this state during any tax period; or

(2) it is a financial institution as defined in section 290.01, subdivision 4a, and the sum of its assets and the absolute value of its deposits attributable to sources within this state equals or exceeds $5,000,000, with assets and deposits attributed to sources within this state by applying the principles established under section 290.191, except as provided in subdivision 3.

(b) A financial institution that (i) is not engaged in activities within this state under subdivision 1, paragraph (a), and (ii) does not satisfy the requirements of paragraph (a) is not subject to taxes imposed by this chapter.

Sec. 2. Minnesota Statutes 1988, section 290.015, subdivision 3, is amended to read:

Subd. 3. **EXCEPTIONS.** (a) A person is not subject to tax under this chapter if the person is engaged in the business of selling tangible personal property and taxation of that person under this chapter is precluded by Public Law Number 86-272, United States Code, title 15, sections 381 to 384 or would be so precluded except for the fact that the person stored tangible personal property in a state licensed facility under chapter 231.

(b) Ownership of an interest in the following types of property (including those contacts with this state reasonably required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property) shall not be a factor in determining whether the owner is subject to tax under this chapter:

(1) an interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company <u>or a fund of a regulated investment company</u>, as those terms are defined in the Internal Revenue Code of 1986, as amended through December 31, 1987;

(2) <u>an interest in money market instruments or securities as defined in section 290.191, subdivision 6, paragraphs (c) and (d);</u>

<u>(3)</u> an interest in a loan-backed, mortgage-backed, or receivable-backed security representing either: (i) ownership in a pool of promissory notes, mortgages, or receivables or certificates of interest or participation in such notes, mortgages,

or receivables, or (ii) debt obligations or equity interests which provide for payments in relation to payments or reasonable projections of payments on the notes, mortgages, or receivables, and which are issued by a financial institution or by an entity substantially all of whose assets consist of promissory notes, mortgages, receivables, or interests in them;

~~(3)~~ (4) an interest in any assets described in section 290.191, subdivision 11, paragraphs (e) to (l), and in which the payment obligations embodied in such assets were solicited and entered into by persons independent and not acting on behalf of the owner;

~~(4)~~ (5) an interest in the right to service, or collect income from any assets described in section 290.191, subdivision 11, paragraphs (e) to (l), and in which the payment obligations embodied in such assets were solicited and entered into by persons independent and not acting on behalf of the owner;

~~(5)~~ (6) an interest of a person other than an individual, estate, or trust, in any intangible, tangible, real, or personal property acquired in satisfaction, whether in whole or in part, of any asset embodying a payment obligation which is in default, whether secured or unsecured, the ownership of an interest in which would be exempt under the preceding provisions of this subdivision, provided the property is disposed of within a reasonable period of time; or

~~(6)~~ (7) amounts held in escrow or trust accounts, pursuant to and in accordance with the terms of property described in this subdivision.

If the person is a member of the unitary group, paragraph (b) ~~does~~, clauses (2) to (7), do not apply to an interest acquired from another member of the unitary group.

Sec. 3. Minnesota Statutes 1988, section 290.015, subdivision 4, is amended to read:

Subd. 4. **LIMITATIONS.** (a) This section does not subject a trade or business to any regulation, including any tax, of any local unit of government or subdivision of this state if the trade or business does not own or lease tangible or real property located within this state and has no employees or independent contractors present in this state to assist in the carrying on of the business.

(b) The purchase of tangible personal property or intangible property or services by a person that conducts a trade or business with the principal place of business outside of Minnesota (the "non-Minnesota person") from a person within Minnesota shall not be taken into account in determining whether the non-Minnesota person is subject to the taxes imposed by this chapter, except for services involving either the direct solicitation of Minnesota customers or relationships with Minnesota customers after sales are made. This paragraph is subject to the limitations contained in subdivision 3, paragraph (b), clauses (4) and (5).

(c) No contact with any Minnesota financial institution by any financial institution with its principal place of business outside Minnesota with respect to transactions described in subdivision 3, or with respect to deposits received from or by a Minnesota financial institution, shall be taken into account in determining whether such a financial institution is subject to the taxes imposed by this chapter. The fact of participation by a Minnesota financial institution in a transaction which also involves a borrower and a financial institution that conducts a trade or business with its principal place of business outside of Minnesota shall not be a factor in determining whether such financial institution is subject to the taxes imposed by this chapter. This paragraph does not apply to transactions between or among members of the same unitary group.

Sec. 4. Minnesota Statutes 1988, section 290.092, subdivision 2, is amended to read:

Subd. 2. **EXEMPTIONS.** Corporations subject to tax under sections 290.05, subdivision 3; or 60A.15, subdivision 1 and 290.35; real estate investment trusts; regulated investment companies as defined in section 851(a) of the Internal Revenue Code of 1986 or funds of regulated investment companies as defined in section 851(h) of the Internal Revenue Code of 1986, as amended through December 31, 1988; cooperatives taxable under subchapter T of the Internal Revenue Code of 1986 or organized under chapter 308 or a similar law of another state; and entities having a valid election in effect under section 1362 or 860D(b) of the Internal Revenue Code of 1986, as amended through December 31, ~~1987~~ 1988, are not subject to the tax imposed in subdivision 1 or subdivision 5.

Sec. 5. Minnesota Statutes 1988, section 290.092, subdivision 4a, is amended to read:

Subd. 4a. **NEW BUSINESS EXCLUSION.** For the first five taxable years during which a corporation is subject to taxation under this chapter, the amount of its Minnesota property and payrolls must be excluded from the alternative minimum tax base unless it is disqualified in this subdivision. A corporation is considered subject to taxation under this chapter if it would be subject to Minnesota's jurisdiction to tax as provided in section 290.015, before claiming this exclusion. The following does not qualify for this exclusion:

(1) a corporation that is a member of a unitary group that includes at least one business that does not qualify for this exclusion;

(2) any corporation organized under the laws of this state or certified to do business within this state at least five taxable years before the taxable year in which this exclusion is claimed;

(3) corporations created by: reorganizations, as defined in section 368 of the Internal Revenue Code of 1986, as amended through December 31, 1987; or split-ups, split-offs, or spin-offs, as described in section 355 of the Internal Revenue Code of 1986, as amended through December 31, 1987; or the transfer

or acquisition, whether directly or indirectly, of assets which constitute a trade or business, including stock purchases under section 338 of the Internal Revenue Code of 1986, as amended through December 31, 1987, where the surviving, newly formed, or acquiring corporation conducts substantially the same activities as the predecessor corporation, regardless of whether or not the survivor corporation also conducts additional activities, and the predecessor corporation would not otherwise qualify for this exclusion if it had continued to conduct those activities;

(4) any change in identity or form of business where the original business entity would have been subject to Minnesota's taxing jurisdiction, as provided in section 290.015, at least five taxable years before the taxable year in which this exclusion is claimed;

(5) a corporation, the primary business activity of which is the providing of professional services as defined in section 319A.02; operation as a financial institution, as defined in section 290.01, subdivision 4a; sales or management of real estate; or operation as an insurance agency, as defined in section ~~60A.03~~ 60A.02; or

(6) a corporation the affairs of which the commissioner finds were arranged as they were primarily to reduce taxes by qualifying as a new business under this subdivision.

Sec. 6. Minnesota Statutes 1988, section 290.191, subdivision 6, is amended to read:

Subd. 6. **DETERMINATION OF RECEIPTS FACTOR FOR FINANCIAL INSTITUTIONS.** (a) For purposes of this section, the rules in this subdivision and subdivisions 7 and 8 apply in determining the receipts factor for financial institutions.

(b) "Receipts" for this purpose means gross income, including net taxable gain on disposition of assets, including securities and money market instruments, when derived from transactions and activities in the regular course of the taxpayer's trade or business.

(c) "Money market instruments" means federal funds sold and securities purchased under agreements to resell, commercial paper, banker's acceptances, and purchased certificates of deposit and similar instruments to the extent that the instruments are reflected as assets under generally accepted accounting principles.

(d) "Securities" means United States Treasury securities, obligations of United States government agencies and corporations, obligations of state and political subdivisions, corporate stock and other securities, participations in securities backed by mortgages held by United States or state government agencies, loan-backed securities and similar investments to the extent the investments are reflected as assets under generally accepted accounting principles.

(e) Receipts from the lease or rental of real or tangible personal property, including both finance leases and true leases, must be attributed to this state if the property is located in this state. Tangible personal property that is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, mobile equipment, and the like, is considered to be located in a state if:

(1) the operation of the property is entirely within the state; or

(2) the operation of the property is in two or more states, but the principal base of operations from which the property is sent out is in the state.

(f) Interest income and other receipts from assets in the nature of loans that are secured primarily by real estate or tangible personal property must be attributed to this state if the security property is located in this state under the principles stated in paragraph (e).

(g) Interest income and other receipts from consumer loans not secured by real or tangible personal property that are made to residents of this state, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means, must be attributed to this state.

(h) Interest income and other receipts from commercial loans and installment obligations ~~not secured~~ that are unsecured by real or tangible personal property or secured by intangible property must be attributed to this state if the proceeds of the loan are to be applied in this state. If it cannot be determined where the funds are to be applied, the income and receipts are attributed to the state in which the office of the borrower from which the application would be made in the regular course of business is located. If this cannot be determined, the transaction is disregarded in the apportionment formula.

(i) Interest income and other receipts from a participating financial institution's portion of participation and syndication loans must be attributed under paragraphs (e) to (h). A participation loan is ~~a loan in which more than one lender is a creditor to a common borrower~~ an arrangement in which a lender makes a loan to a borrower and then sells all or a part of the loan to a purchasing financial institution. A syndication loan is a multibank loan transaction in which all the lenders are named as parties to the loan documentation, are known to the borrower, and have privity of contract with the borrower.

(j) Interest income and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees must be attributed to the state to which the card charges and fees are regularly billed.

(k) Merchant discount income derived from financial institution credit card holder transactions with a merchant must be attributed to the state in which the merchant is located. In the case of merchants located within and outside the state, only receipts from merchant discounts attributable to sales made from locations within the state are attributed to this state. It is presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer.

(l) Receipts from the performance of fiduciary and other services must be attributed to the state in which the benefits of the services are consumed. If the benefits are consumed in more than one state, the receipts from those benefits must be apportioned to this state pro rata according to the portion of the benefits consumed in this state. If the extent to which the benefits of services are consumed in this state is not readily determinable, the benefits of the services shall be deemed to be consumed at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the benefits of the services shall be deemed to be consumed at the office of the customer to which the services are billed.

(m) Receipts from the issuance of travelers checks and money orders must be attributed to the state in which the checks and money orders are purchased.

(n) Receipts from investments of a financial institution in securities of this state, its political subdivisions, agencies, and instrumentalities must be attributed to this state.

(o) Receipts from a financial institution's interest in any property described in section 290.015, subdivision 3, paragraph (b), is not included in the numerator or the denominator of the receipts factor provided the financial institution's activities within this state with respect to any interest in the property are limited in the manner provided in section 290.015, subdivision 3, paragraph (b). If a financial institution is subject to tax under this chapter, its interest in property described in section 290.015, subdivision 3, paragraph (b), is included in the receipts factor in the same manner as assets in the nature of securities or money market instruments are included under paragraph (n) and subdivision 7.

Sec. 7. Minnesota Statutes 1988, section 290.191, subdivision 11, is amended to read:

Subd. 11. **FINANCIAL INSTITUTIONS; PROPERTY FACTOR.** (a) For financial institutions, the property factor includes, as well as tangible property, intangible property as set forth in this subdivision.

(b) Intangible personal property must be included at its tax basis for federal income tax purposes.

(c) Goodwill must not be included in the property factor.

(d) Coin and currency located in this state must be attributed to this state.

(e) Lease financing receivables must be attributed to this state if and to the extent that the property is located within this state.

(f) Assets in the nature of loans that are secured by real or tangible personal property must be attributed to this state if and to the extent that the security property is located within this state.

(g) Assets in the nature of consumer loans and installment obligations that are unsecured or secured by intangible property must be attributed to this state if the loan was made to a resident of this state.

(h) Assets in the nature of commercial loan and installment obligations that are unsecured by real or tangible personal property or secured by intangible property must be attributed to this state if the ~~loan~~ proceeds of the loan are to be applied in this state. If it cannot be determined where the funds are to be applied, the assets must be attributed to the state in which there is located the office of the borrower from which the application would be made in the regular course of business. If this cannot be determined, the transaction is disregarded in the apportionment formula.

(i) A participating financial institution's portion of ~~a~~ participation ~~loan~~ and syndication loans must be attributed under paragraphs (e) to (h).

(j) Financial institution credit card and travel and entertainment credit card receivables must be attributed to the state to which the credit card charges and fees are regularly billed.

(k) Receivables arising from merchant discount income derived from financial institution credit card holder transactions with a merchant are attributed to the state in which the merchant is located. In the case of merchants located within and without the state, only ~~receipts~~ receivables from merchant discounts attributable to sales made from locations within the state are attributed to this state. It is presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer.

(l) Assets in the nature of securities and money market instruments are apportioned to this state based upon the ratio that total deposits from this state, its residents, its political subdivisions, agencies and instrumentalities bear to the total deposits from all states, their residents, their political subdivisions, agencies and instrumentalities. In the case of an unregulated financial institution, the assets are apportioned to this state based upon the ratio that its gross business income earned from sources within this state bears to gross business income earned from sources within all states. For purposes of this subsection, deposits made by this state, its residents, its political subdivisions, agencies, and instrumentalities are attributed to this state, whether or not the deposits are accepted or maintained by the taxpayer at locations within this state.

(m) A financial institution's interest in any property described in section 290.015, subdivision 3, paragraph (b), is not included in the numerator or the denominator of the property factor provided the financial institution's activities within this state with respect to any interest in such property are limited in the manner provided in section 290.015, subdivision 3, paragraph (b). If a financial institution is subject to tax under this chapter, its interest in property described in section 290.015, subdivision 3, paragraph (b), is included in the property factor in the same manner as assets in the nature of securities or money market instruments are included under paragraph (1).

Sec. 8. Minnesota Statutes 1988, section 290.371, is amended to read:

Subdivision 1. **REPORT REQUIRED.** Every corporation that, during any calendar year or fiscal accounting year beginning after December 31, 1986, obtained any business from within this state as described in section 290.015, subdivision 1, ~~with the exception of:~~

~~(1) activity levels lower than those set forth in section 290.015, subdivision 2, paragraph (a), if the corporation is a financial institution; or~~

~~(2) activities described in section 290.015, subdivision 3, paragraph (b); or~~

~~(3)~~ except corporations specifically exempted under subdivision ~~3~~ 2, must file a notice of business activities report, as provided in this section. Filing of the report is not a factor in determining whether a corporation is subject to taxation under this chapter.

Subd. ~~3.~~ 2. **EXEMPTIONS.** A corporation is not required to file a notice of business activities report if:

(1) by the end of an accounting period for which it was otherwise required to file a notice of business activities report under this section, it had received a certificate of authority to do business in this state;

(2) a timely return or report has been filed under section 290.05, subdivision 4; or 290.37;

(3) the corporation is exempt from taxation under this chapter pursuant to section 290.05, subdivision 1; ~~or~~

(4) the corporation's activities in Minnesota, or the interests in property which it owns, consist solely of activities or property exempted from jurisdiction to tax under section 290.015, subdivision 3, paragraph (b)~~.~~; or

(5) the corporation has a valid election in effect under section 1362 of the Internal Revenue Code of 1986, as amended through December 31, 1988.

Subd. ~~4.~~ 3. **ANNUAL FILING.** Every corporation not exempt under subdivision 3 must file annually a notice of business activities report, including such forms as the commissioner may require, with respect to each of its calendar or fiscal accounting years beginning after December 31, 1986, on or before the 15th day of the fourth month after the close of the calendar or fiscal accounting year.

Subd. ~~5.~~ 4. **FAILURE TO FILE TIMELY REPORT.** (a) Any corporation required to file a notice of business activities report does not have any cause of action upon which it may bring suit under Minnesota law, except for issues related to its Minnesota tax liability, unless the corporation has filed a notice of business activities report.

(b) The failure of a corporation to file a timely report prevents the use of the courts in this state, except regarding activities and property described in section 290.015, subdivision 3, paragraph (b), for all contracts executed and all causes of action that arose at any time before the end of the last accounting period for which the corporation failed to file a required report.

(c) The court in which the issues arise ~~has the power to~~ must excuse the corporation for its failure to file a report when due, and restore the corporation's cause of action under the laws of this state, if the corporation has paid all taxes, interest, and civil penalties due the state for all periods, or provided for payment of them by adequate security or bond approved by the commissioner.

(d) Notwithstanding the provisions of section 290.61, the commissioner may acknowledge whether or not a particular corporation has filed with the commissioner reports or returns required by this chapter if the acknowledgment:

(1) is to a party in a civil action;

(2) relates to the filing status of another party in the same civil action; and

(3) is in response to a written request accompanied by a copy of the summons and complaint in the civil action.

Sec. 9. Laws 1988, chapter 719, article 2, section 57, is amended to read:

Sec. 57. **EFFECTIVE DATE.**

Sections 1, 4, and 5 are effective January 1, 1988. Sections 7, 8, 9, 11, clause (13), 31, and 40 are effective for taxable years beginning after December 31, 1990, except that sections 7, 8, 9, 11, clause (13), and 40 are effective for taxable years beginning after December 31, 1989, insofar as they apply to 936 corporations and sections 7 and 8 are effective for taxable years beginning after December 31, 1988, insofar as they apply to royalties, fees, or other like income as described in section 12, clause (11). In this section, "936 corporations" are corporations referred to in section 9, clause (2)(ii). Sections 12, clause (11), 14, 26, 33, and 56, paragraph (c), are effective for taxable years beginning after December 31, 1988. Sections 2, 3, 32, 36, 37, and 38 are effective for taxable years beginning after December 31, 1987. Section 30, paragraphs (f), (g), (h), and (j) are effective for taxable years beginning after December 31, 1990, except that insofar as they apply to 936 corporations, they are effective for taxable years beginning after December 31, 1989. Sections 29, in its reference to section 290.17, subdivision 4, paragraph (i), and 30, paragraph (i), are effective for taxable years beginning after December 31, 1987, in its application to dividends, for taxable years beginning after December 31, 1988, in its application to income described in section 290.01, subdivision 19d, clause (11), for taxable years beginning after December 31, 1989, in its application to ~~other income of 936 corpora-~~

**New language is indicated by underline, deletions by ~~strikeout~~.**

~~tions~~ a deemed dividend from a 936 corporation, and for taxable years beginning after December 31, 1990, in its application to other ~~income of foreign operating corporations~~ deemed dividends. Section 30, paragraph (k) is effective for taxable years beginning after December 31, 1987. As used in this section, a "deemed dividend" has the meaning described in section 30, paragraph (g).

Sections 10, 11, clauses (2) and (3), 12, except for clause (11), 13, 15 to 18, 20, 21, 23, 25, 29 insofar as it refers to companies subject to the occupation tax, 34, 35, 39, 41 to 49, and 56, paragraph (d), are effective for taxable years beginning after December 31, 1986. Section 22 is effective for taxable years beginning after December 31, 1986, except that the part relating to the apportionment of the exemption amount among members of a unitary group is effective for taxable years beginning after December 31, 1987. Section 27 is effective for taxable years beginning after December 31, 1986, except that the part relating to the allowance of a net operating loss incurred in any taxable year to the extent of the apportionment ratio of the loss year is effective for taxable years beginning after December 31, 1987. Section 28 is effective for losses incurred in taxable years beginning after December 31, ~~1986~~ 1987, and is repealed effective for taxable years beginning after December 31, 1993. Sections 6, 50, and 55 are effective the day following final enactment. Sections 51 and 52 are effective for ores mined after December 31, 1989. Section 53 is effective for ores mined after December 31, 1986, and before January 1, 1990. Section 54 is effective for ore mined after December 31, 1986. Section 56, paragraph (a), is effective for ores mined after December 31, 1989. Section 56, paragraph (b), is effective for ores mined after December 31, 1986, and supersedes the repealer in Laws 1987, chapter 268, article 9, section 43.

Sec. 10. **REPEALER.**

Minnesota Statutes 1988, section 52.22, is repealed.

Sec. 11. **EFFECTIVE DATE.**

Sections 1 to 8 are effective for taxable years beginning after December 31, 1986, except that the elimination of clause (1) in section 290.371, subdivision 1, is effective for taxable years beginning after December 31, 1988.

Presented to the governor April 7, 1989

Signed by the governor April 7, 1989, 4:54 p.m.

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## CHAPTER 28—H.F.No. 214

*An act relating to taxation; making technical corrections and clarifications to individual income and corporate franchise taxes; updating references to the Internal Revenue Code; imposing a tax and providing for withholding of certain payments to nonresidents; requiring*